

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 700

UNITED STATES OF AMERICA, APPELLANT

vs.

ROBERT M. HARRISS, RALPH W. MOORE, TOM LINDER  
AND NATIONAL FARM COMMITTEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

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I

BLEED THROUGH



A [Caption omitted.]

1 In the United States District Court for the District of  
Columbia

----- Term A. D. 1949

Criminal Action No. 1212-49

THE UNITED STATES OF AMERICA

v.

ROBERT M. HARRISS, RALPH W. MOORE, JAMES E. McDONALD, TOM  
LINDER, AND NATIONAL FARM COMMITTEE

[File endorsement omitted.]

*Information*

Filed August 31, 1949

UNITED STATES OF AMERICA,

*The District of Columbia, ss:*

The United States Attorney in and for the District of Columbia,  
charges:

COUNT I

1. That Robert M. Harriss who is hereby charged and made a defendant herein, is a partner in the firm of Harris and Vose, commodity brokers, located in the City of New York, and that at all times material herein said Harris and said firm were engaged in the business of trading in, dealing in, and buying and selling futures contracts for the purchase and sale of divers agricultural commodities and farm products as brokers, for the personal account of said Harris, and for the account of the said firm of Harris and Vose, and for the accounts of divers other persons; and that the said Harriss had, at all times material herein, a personal financial interest in maintaining and increasing the market prices of such agricultural commodities and commodity futures.

2. That Tom Linder, of Atlanta, Georgia, who is hereby charged and made a defendant herein, was, between August 2, 1946, and the date of the filing and lodging of this information, an official, to wit, the Commissioner of Agriculture, of the State of  
2 Georgia and that during this time he had in his private capacity a personal financial interest in the buying and selling of divers futures contracts for agricultural commodities and farm products for his private gain and profit, all of which

trading in said contracts was carried on by said Linder wholly outside of and apart from his official capacity as such Commissioner of Agriculture.

3. That James E. McDonald, of Austin, Texas, who is hereby charged and made a defendant herein, was, between August 2, 1946, and the date of the filing and lodging of this information, an official, to wit, the Commissioner of Agriculture, of the State of Texas and, that during this time he had in his private capacity a personal financial interest in the buying and selling of divers futures contracts for agricultural commodities and farm products for his private gain and profit, all of which trading in futures contracts was carried on by the said McDonald wholly outside of and apart from his official capacity as such Commissioner.

4. That Ralph W. Moore of Washington, District of Columbia, who is hereby charged and named as a defendant herein was, between August 2, 1946, and the date of the filing and lodging of this information, engaged in buying and selling, for his personal profit and gain, divers futures contracts for agricultural commodities and farm products, and that he maintained offices in Washington, District of Columbia, throughout that time.

5. That the said Ralph W. Moore, between August 2, 1946, and the date of the filing and lodging of this information, received contributions, considerations and advances of money and expended money, said receipts were to be and were used and expenditures were to be and were made principally to aid in influencing and attempting to influence, directly and indirectly, the passage and defeat of legislation, and other legislative actions and activities, by the Congress of the United States which would benefit the defendants in their market activities.

6. That between August 2, 1946, and the date of the filing and lodging of this information, the Association, The Southern Commissioners of Agriculture, was an unincorporated association, and included among others the defendants Tom Linder and James E. McDonald as members thereof; and that from on or about November 1, 1947, the Farm Commissioners Council was an

3 unincorporated association which included, among others, the said defendants Tom Linder and James E. McDonald as members thereof; and that between August 2, 1946 and the date of the filing and lodging of this information, the National Farm Committee was a Texas corporation and included among others the defendants Tom Linder and Ralph W. Moore as officers thereof, and the defendants James E. McDonald, Tom Linder and Ralph W. Moore as directors thereof; and that the aforesaid organizations by reason of the status of each of them as organizations ostensibly engaged in activities designed and intended to further and protect the interests of persons engaged in raising

and producing agricultural products, were to be and were operated, used and employed by the defendants herein to implement and to cloak the execution of defendants' plans, schemes and designs to influence directly and indirectly the passage and defeat of legislation, favorable to the defendants' personal financial interests, and to influence directly and indirectly other legislative activities of the Congress; and all of this when, as the defendants well knew and intended, the members of the Congress would not know that such activities, plans, schemes and designs of the defendants and such use and employment of these several organizations were in fact based upon and in pursuance of the defendants' purpose to advance their personal financial interests; and, as to the defendants Tom Linder and James E. McDonald, that the members of the Congress would be unaware that they were acting outside of and apart from their capacities as state officials instead of making unbiased efforts to further the interests of persons engaged in agricultural pursuits and of other members of the public.

7. That from and after August 2, 1946, under the provisions of the Act of August 2, 1946 (60 Stat. 840) known as the Federal Regulation of Lobbying Act, it has been the duty of all persons engaging for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States, before doing anything in furtherance of such purposes, to register with the Clerk of the House of Representatives of the United States and with the Secretary

of the Senate, giving those officers in writing and under oath

4 the name and address of such individual, partnership, committee, association, corporation, or other organization or group of persons and also the name of the employer in whose interest such employment is performed, the duration of such employment, the amount received and to be received from such employer, the amount to be paid for expenses in the course of such employment and what expenses are to be included; and that the said Clerk and Secretary are required to compile such registrations, and cause the same to be printed in the Congressional Record in order that the members of the said House of Representatives and of the said Senate should, in the course of their legislative duties, be duly and accurately advised and informed as to the matters and things concerning which said registrations were so required to be made by Section 308 of the Federal Regulation of Lobbying Act.

8. That from and after August 2, 1946, under the provisions of the Federal Regulation of Lobbying Act it has been the duty of every person receiving any contributions or expending any money, for the purpose of influencing directly or indirectly the passage or defeat of any legislation by the Congress of the United States, to file with the Clerk of the House of Representatives between

the first and tenth day of each calendar quarter a statement under oath containing complete, as of the day next preceding the date of filing, information relating to the aggregate amount of contributions, names of contributors, names and addresses of persons to whom expenditures have been made and aggregate amounts of expenditures as prescribed in Section 305 of the said Federal Regulation of Lobbying Act; and that the said Clerk was required to preserve the filings for a period of two years and to maintain them for public inspection, in order that the members of the Congress should, in the course of their legislative duties, be duly and accurately advised and informed as to the matters and things concerning which said filings were so required to be made.

9. That during the period from August 2, 1946, and continuing thereafter to the date of the filing and lodging of this information, the defendant Ralph W. Moore engaged himself for pay and  
5 for other consideration on behalf of Robert M. Harriss for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the prices of agricultural commodities and commodity futures and (b) the defeat of legislation by the Congress of the United States which would cause a decline of prices of agricultural commodities and commodity futures.

10. That the defendant Ralph W. Moore on divers dates between August 2, 1946, and the date of the filing and lodging of this information, received money and other things of value from the defendant Robert M. Harriss to be used principally to aid in the passage and defeat of the aforesaid legislation and more particularly, that during this period the defendant Ralph W. Moore received payments of money and grants of loans from said Robert M. Harriss, and had financed and guaranteed for his, the said Ralph W. Moore's benefit, by the said Robert M. Harriss, commodity trading accounts with the brokerage firm of Harriss and Vose.

11. That beginning on August 2, 1946, and continuing thereafter until on or about March 1, 1948, the defendant Ralph W. Moore, in furtherance of the objects and purposes for which he had theretofore received money and other things of value from the defendant Robert M. Harriss to be used principally to aid in the passage and defeat of legislation as averred in paragraph 8 of this count of this information and to accomplish the same, did the following:

(a) That beginning on August 2, 1946, and continuing to on or about March 1, 1948, the defendant Ralph W. Moore, procured the Association, Southern Commissioners of Agriculture, and the Farm Commissioners Council to attempt to influence legislation

by the Congress of the United States relating to (1) parity on farm prices, (2) repeal of the oleomargarine tax, and (3) the President's program for legislation providing for an increase in commodity trading margins.

6 (b) That on or about the month of July 1947, the defendant Ralph W. Moore, procured one Scott Stevens McCloskey to urge, by writing statements which were presented to committees of the Congress of the United States and to members of Congress, urging the passage of the Case Bill and other Bills which would enhance prices of farm commodities.

(c) Paid the cost of a dinner held at the Raleigh Hotel, Washington, D. C., on or about February 4, 1947, in the name of North Central States Association of Commissioners, Secretaries and Directors of Agriculture, at which dinner a large number of members of Congress were present, and at which speeches and statements were made concerning legislation by Congress.

(d) Paid the cost of a dinner held at the Mayflower Hotel, Washington, D. C., on or about November 24, 1947, in the name of Farm Commissioners Council, at which dinner a large number of members of Congress were present, and at which speeches and statements were made concerning legislation by Congress.

(e) That on or about November 24, 1947, the defendant Ralph W. Moore, procured the Mayflower Hotel, Washington, D. C., to schedule a dinner held at said hotel under the designation "Farm Commissioners Council," and paid the cost of said dinner, at which dinner speeches and statements were made in the presence of a large number of members of the Congress of the United States concerning legislation by the Congress of the United States relating to farm commodities.

7 (f) On or about November 28, 1947, the defendant Ralph W. Moore, procured one Dr. Clair to write up material for the Association, Southern Commissioners of Agriculture, to be presented to the Congress of the United States and its committees relative to legislative matters affecting the price of farm commodities and the defendant Moore paid the said Dr. Clair, for said services.

(g) On or about February 5, 1948, the defendant Ralph W. Moore, procured one Scott Stevens McCloskey to write letters to Grange officers in the Pacific northwest, urging them to write and wire their Congressmen to put peas in the program for foodstuffs to be sent to Europe under the European Recovery Program.

(h) The defendant Ralph W. Moore procured one Carl H. Wilken to appear before committees of the Congress of the United States urging the legislative action regarding farm commodities which the defendants desired.

(i) The defendant Ralph W. Moore procured one Carl H. Wilken to testify before the House Agriculture Committee, of the Congress of the United States, on or about May 8, 1947, and urge defeat of legislation which would tend to cause lower prices of agricultural commodities.

(j) The defendant Ralph W. Moore procured one Carl H. Wilken to testify before the House Ways and Means Committee, of the Congress of the United States, on or about April 9, 1947, concerning proposed legislation respecting reciprocal trade agreements program and urged defeat of any legislation which would tend to cause lower prices of farm commodities.

12. That on or about March 1, 1948, at and in the District of Columbia of the United States and within the jurisdiction of this Court, the defendant Ralph W. Moore, being then and there a person who, under the facts alleged above and the provisions of Section 308 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), was required, before the doing of the acts and things enumerated in paragraph 9 of this Information, to register with the Clerk of the House of Representatives and the Secretary of the Senate, both of the Congress of the United States, and to give to those officers in writing and under oath the information required by said section 308, did then and there unlawfully, wilfully and knowingly fail to register with the Clerk of the House of Representatives and the Secretary of the Senate, both of the Congress of the United States.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States, in violation of Section 308 of said the Federal Regulation of Lobbying Act.

Violation of Section 308 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

## COUNT II

The United States Attorney in and for the District of Columbia of the United States, charges:

1. All of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8, of Count I of this information are hereby incorporated in this count of this information by reference thereto and realleged herein as fully and effectually as if the same were here repeated in full.

2. That the defendant Ralph W. Moore on divers dates between July 1, 1946, and the date of the filing and lodging of this information, expended money principally to aid in influencing, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agri-

cultural commodities and commodity futures and (b) the defeat of legislation by the Congress of the United States which would cause a decline of prices of agricultural commodities and commodity futures.

3. That for the purpose of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, the defendant Ralph W. Moore, between August 2, 1946, and the date of the filing and lodging of this information, paid money to, financed and sponsored activities of, the Association, The Southern Commissioners of Agriculture, an unincorporated association, which, from August 2, 1946, to the date of the filing and lodging of this information, has had as its principal purpose the influencing, directly and indirectly, of legislation by the Congress of the United States affecting agriculture.

4. That for the further purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Ralph W. Moore, between August 2, 1946, and the date of the filing and lodging of this information, paid money to, financed and sponsored activities of, the Farm Commissioners Council, an unincorporated association which during a period between on or about August 1, 1946, and continuing to the date of the filing and lodging of this information, has had as its principal purpose the influencing, directly and indirectly, of legislation by the Congress of the United States affecting agriculture.

5. That for the further purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Ralph W. Moore, between August 2, 1946, and the date of the filing and lodging of this information, paid money to, financed and sponsored activities of, the North Central States Association of Commissioners, Secretaries and Directors of Agriculture, an unincorporated association which, from August 2, 1946, to the date of the filing and lodging of this information, has had as its principal purpose the influencing, directly and indirectly, of legislation by the Congress of the United States affecting agriculture.

6. That for the further purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Ralph W. Moore, between August 2, 1946, and the date of the filing and lodging of this information, procured the services of James E. McDonald by financing commodity trading accounts for the benefit of the said McDonald with the brokerage firms of Merrill Lynch, Pierce, Fenner and Beane, and Harriss and Vose.

7. That for the further purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Ralph W. Moore, between August 2, 1946, and the date of the filing and lodging of this information, procured the services of Tom Linder by payments of money to the aforesaid Linder and



by financing commodity trading accounts for the benefit of the said Linder with the brokerage firm of Harriss and Vose.

10 8. That for the further purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Ralph W. Moore, between August 2, 1946, and the date of the filing and lodging of this information, procured the services of one Carl H. Wilken, of Washington, D. C., by payments of money to the said Wilken and by financing commodity trading accounts for the benefit of the said Wilken with the brokerage firm of Merrill, Lynch, Pierce, Fenner and Beane.

9. That for the further purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Ralph W. Moore, between August 2, 1946, and on or about September 15, 1946, procured the services of one Scott Stevens McCloskey, of Washington, D. C., by payments of money to the said McCloskey.

10. That during the third quarter (July, August, and September) of the year 1946, the defendant Ralph W. Moore for the purposes of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, on or about the dates, in the amounts and to the persons, firms, associations and corporations, set out below, made the following expenditures:

(a) On or about July 1, 1946, to the defendant Tom Linder the sum and amount of \$750.00, from secret account No. 145, at the brokerage firm of Harriss and Vose, New York, N. Y.

(b) On or about September 15, 1946, to one Scott Stevens McCloskey, the sum and amount of \$250.00.

(c) On or about September 9, 1946, to the defendant Tom Linder the sum and amount of \$1,500.00 through the brokerage firm of Harriss and Vose, New York, N. Y.

11. That at no time between the first and tenth days of October, 1946, did the defendant Ralph W. Moore file with the Clerk of the House of Representatives of the Congress of the United States covering the period embracing the third quarter (July, August, and September) of the year 1946 and any of the days of said period from the first to the tenth of October 1946, a statement

setting out and furnishing the information required by section 305 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), concerning the expenditures made by him principally to aid in influencing legislation by the Congress of the United States as previously alleged in this court, whereby; the said defendant Ralph W. Moore, on or about the 10th day of October 1946, at and in the District of Columbia of the United States and within the jurisdiction of this Court, having, during said third quarter of the year 1946, made the expenditures set out in paragraph 9 of this count of this in-



formation for the purposes principally to aid in influencing and attempting to influence aforesaid legislation by the Congress of the United States, unlawfully, wilfully and knowingly failed to file a statement with the Clerk of the House of Representatives of the Congress of the United States setting forth the information required to be filed by him by the provisions of said section 305 of said Federal Regulation of Lobbying Act.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 305, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

### COUNT III

The United States Attorney for the District of Columbia of the United States, charges:

1. All of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 of Count I of and in paragraphs 2, 3, 4, 5, 6, 7, and 8 of Count II of this information are hereby incorporated in this count of this information by reference thereto and realleged herein as fully and effectually as if the same were here repeated in full.

2. That during the first quarter (January, February, and March) of the year 1947, the defendant Ralph W. Moore for the purpose of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, on or about the dates, in the amounts and to the persons, firms, associations and corporations, set out below, made the following expenditures:

(a) On or about February 4, 1947, Mayflower Hotel, for dinner, \$1,100.00.

3. That at no time between the first and tenth days of April 1947, did the defendant Ralph W. Moore, file with the Clerk of the House of Representatives of the Congress of the United States covering the period embracing the first quarter (January, February, and March) of the year 1947 and any of the days of said period from the first to the tenth of April 1947, a statement setting out and furnishing the information required by section 305 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), concerning the expenditures made by him principally to aid in influencing the aforesaid legislation by the Congress of the United States as previously alleged in this count, whereby; the said defendant, Ralph W. Moore, on or about the 10th day of April 1947, at and in the District of Columbia of the United States and within the jurisdiction of this court, having, during said first quarter of the year 1947, made the expenditures set out in para-

graph 2 of this count of this information for the purposes principally to aid in influencing and attempting to influence the aforesaid legislation by the Congress of the United States, unlawfully, wilfully and knowingly failed to file a statement with the Clerk of the House of Representatives of the Congress of the United States setting forth the information required to be filed by him by the provisions of said section 305 of the said Federal Regulation of Lobbying Act.

Contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 305, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

#### COUNT IV

The United States Attorney in and for the District of Columbia of the United States, charges:

1. All of the allegations contained in paragraphs 1, 2, 3, 13 4, 5, 6, 7, and 8 of Count I, and in paragraphs 2, 3, 4, 5, 6, 7, and 8 of Count II of this information are hereby incorporated in this count of this information by reference thereto and realleged herein as fully and effectually as if the same were here repeated in full.

2. That during the third quarter (July, August, and September) of the year 1947, the defendant Ralph W. Moore for the purposes of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, on or about the dates, in the amounts and to the persons, firms, associations and corporations, set out below, made the following expenditures:

(a) On or about September 16, 1947, to one Ruth Aspinwall, of Washington, D. C., by depositing the sum and amount of \$3,600 in the account of said Ruth Aspinwall at the brokerage firm of Laidlaw & Company.

(b) On or about September 10, 1947, to James E. McDonald, by depositing the sum and amount of \$3,000 in the account of James E. McDonald at the brokerage firm of Merrill, Lynch, Pierce, Fenner and Beane.

(c) On or about September 17, 1947, to Harlod B. McDonald, of the State of Texas, by depositing \$4,500 in an account in the name of Harold B. McDonald at the brokerage firm of Merrill, Lynch, Pierce, Fenner and Beane, which the defendant had opened at said firm without the knowledge of the said Harold B. McDonald.

3. That at no time between the first and tenth days of October 1947, did the defendant Ralph W. Moore file with the Clerk of

the House of Representatives of the Congress of the United States covering the period embracing the third quarter (July, August, and September) of the year 1947 and any of the days of said period from the first to the tenth of October 1947, a statement setting out and furnishing the information required by Section 305 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), concerning the expenditures made  
14 by him principally to aid in influencing legislation by the Congress of the United States as previously alleged in this count, whereby; the said defendant, Ralph W. Moore, on or about the 10th day of October 1947, at and in the District of Columbia of the United States and within the jurisdiction of this court, having, during said third quarter of the year 1947, made the expenditures set out in paragraph 2 of this count for the purposes principally to aid in influencing and attempting to influence the aforesaid legislation by the Congress of the United States, unlawfully, wilfully and knowingly failed to file a statement with the Clerk of the House of Representatives of the Congress of the United States setting forth the information required to be filed by him by the provision of said section 305 of the said Federal Regulation of Lobbying Act.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 305, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

#### COUNT V

The United States Attorney in and for the District of Columbia of the United States, charges:

1. All of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 of Count I and in paragraphs 2, 3, 4, 5, 6, 7, and 8 of Count II of this information are hereby incorporated in this count of this information by reference thereto and realleged herein as fully and effectually as if the same were repeated here in full.

2. That during the fourth quarter (October, November, and December) of the year 1947, the defendant Ralph W. Moore for the purposes of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, on or about the dates, in the amounts and to the persons, firms, associations, and corporations, set out below, made the following expenditures:

(a) On or about November 7, 1947, to one C. C. Hanson, at Washington D. C., in the sum and amount of \$46.21 for  
15 the services of said Hanson in mimeographing 25 copies

of a document sent to R. M. Harriss, New York at the request of the defendant James E. McDonald.

(b) On or about November 20, 1947, to one C. C. Hanson, at Washington, D. C., in the sum and amount of \$63.05 for the services of said Hanson in preparing and sending out a press release on behalf of the Association, Southern Commissioners and Directors of Agriculture, in which a hearing was requested before the Senate Committee on Agriculture on the proposed legislation which the President mentioned in his State message on January 17, 1947.

(c) On or about November 20, 1947, to one C. C. Hanson, at Washington, D. C., in the sum and amount of \$33.92 for the services of said Hanson, in preparing and sending out a press release, 50 copies of which the said Hanson delivered at the National Press Club.

(d) On or about December 4, 1947, to the Mayflower Hotel, Washington, D. C., the sum and amount of \$1,589.98 which amount was credited to the defendant Moore's account at said hotel against a charge therein entered for 293 dinners on November 24, 1947.

(e) On or about December 31, 1947, to the Mayflower Hotel, Washington, D. C., the sum and amount of \$4,356.01 which amount was credited to the defendant Moore's account at said hotel against the balance of the charge for 293 dinners on November 24, 1947, and other items.

(f) On or about December 15, 1947, to one C. C. Hanson, Washington, D. C., the sum and amount of \$500, in payment of an expense account of the said Hanson.

(g) On or about December 19, 1947, to one C. C. Hanson, Washington, D. C., the sum and amount of \$459.36 in payment  
16 of an expense account of the said Hanson.

(h) On or about December 18, 1947, to one C. C. Hanson, Washington, D. C., the sum and amount of \$77.73 for the services of said Hanson in preparing a document to President Wilson of the Association of Southern Commissioners and Directors of Agriculture.

(i) On or about December 18, 1947, to one C. C. Hanson, Washington, D. C., the sum and amount of \$52.76 for the services of the said Hanson in preparing and sending out a Farm Commissioners press release stating that nearly 200 members of Congress had accepted invitations to the dinner sponsored by the Farm Commissioners Council.

(j) On or about December 18, 1947, to one C. C. Hanson, Washington, D. C., the sum and amount of \$205.61 for the service of said Hanson on press releases in one of which the defendant James E. McDonald stated that he had found the President's proposal unsound.

(k) On or about December 18, 1947, to one C. C. Hanson, Washington, D. C., the sum and amount of \$94.00 for the services of said Hanson in respect to a news item in the Washington Post, 531 copies of which were sent to members of Congress.

(l) On or about December 18, 1947, to one C. C. Hanson, Washington, D. C., the sum and amount of \$197.34 for the services of said Hanson in preparing 1600 copies of a statement made by the defendant Tom Linder before the Senate Committee on Agriculture.

(m) On or about December 18, 1947, to one C. C. Hanson, Washington, D. C., the sum and amount of \$100 to compensate one Dr. Clair, for work on a press release.

(n) On or about June 1947, to one C. H. Wilken, Washington, D. C., the sum and amount of \$1,000.

17 (o) During said quarter the defendant loaned to one C. H. Wilken, the sum and amount of \$5,750.

3. That at no time between the first and tenth days of January, 1948, did the defendant Ralph W. Moore file with the Clerk of the House of Representatives of the Congress of the United States covering the period embracing the fourth quarter (October, November, and December) of the year 1947 and any of the days of said period from the first to the tenth of January 1948, a statement setting out and furnishing the information required by section 305 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), concerning the expenditures made by him principally to aid in influencing legislation by the Congress of the United States as previously alleged in this count, whereby; the said defendant, Ralph W. Moore, on or about the 10th day of January 1948, at and in the District of Columbia of the United States and within the jurisdiction of this court, having, during said fourth quarter of the year 1947, made the expenditures set out in paragraph 2 of this count of this information for the purpose principally to aid in influencing and attempting to influence the aforesaid legislation by the Congress of the United States, unlawfully, wilfully and knowingly failed to file a statement with the Clerk of the House of Representatives of the Congress of the United States setting forth the information required to be filed by him by the provisions of said section 305 of said the Federal Regulation of Lobbying Act.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 305, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

## COUNT VI

The United States Attorney for the District of Columbia of the United States, charges:

1. All of the allegations contained in paragraphs 1, 2, 3, 18 4, 5, 6, 7, and 8, of Count I of this information are hereby incorporated in this count of this information by reference thereto and realleged herein as fully and effectually as if the same were here repeated in full.

2. That the defendant Robert M. Harriss on divers dates between August 2, 1946 and the date of the filing and lodging of this information, expended money principally to aid in influencing, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agricultural commodities and commodity futures and (b) the defeat of legislation by the Congress of the United States which would cause a decline of prices of agricultural commodities and commodity futures.

3. That for the purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Robert M. Harriss, between August 2, 1946 and the date of the filing and lodging of this information, procured the services of the defendant Ralph W. Moore by making loans to the said Moore and by financing and guaranteeing commodity trading accounts for the benefit of the said Moore with the brokerage firm of Harriss and Vose.

4. That for the further purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Robert M. Harriss, between August 2, 1946, and the date of the filing and lodging of this information, procured the services of the defendant James E. McDonald by making payments of money to the said McDonald and by financing and depositing money in commodity trading accounts for the benefit of the said McDonald with the brokerage firm of Harriss and Vose.

5. That for the further purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant Robert M. Harriss, between August 2, 1946, and the date of the filing and lodging of this information, procured the services of the defendant Tom Linder by making payments of money to the said Linder and by financing and depositing money in commodity trading accounts for the benefit of the said Linder with the brokerage firm of Harriss and Vose.

19 6. That during that part of the calendar year 1946, embraced within the first, second, and third quarters (months of January to September, inclusive) both before and subsequent to the effective date of the Federal Regulation of Lobbying Act

(Act of August 2, 1946, 60 Stat. 840), the defendant Robert M. Harriss for the purposes of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, on or about the dates, in the amounts and to the persons, firms, associations and corporations, set out below, made the following expenditures:

(a) March 20, 1946, by check to "JEM," the sum and amount of \$1,395.00, disbursed from account No. 124, of the defendant Robert M. Harriss at the brokerage firm of Harriss and Vose, New York.

(b) March 22, 1946, to C. C. Hanson, the sum and amount of \$250.00.

(c) June 17, 1946, to Tom Linder, the sum and amount of \$500.00, disbursed by personal check of the defendant Robert M. Harriss.

(d) June 21, 1946, to Lois Moore, the sum and amount of \$500.00, from the account of the defendant Robert M. Harriss at the brokerage firm of Harriss and Vose.

(e) July 1, 1946, to the defendant Tom Linder, the sum and amount of \$750.00, disbursed from account No. 145 of the defendant Robert M. Harris at the brokerage firm of Harriss and Vose.

(f) July 14, 1946, to the defendant Tom Linder, the sum and amount of \$250.00, for expenses.

(g) July 15, 1946, to Matt Dahl, the sum and amount of \$250.00, for traveling expenses. This item was paid by a cashier's check of the National City Bank, New York, purchased by Harriss and Vose.

(h) August 5, 1946, to National Farm Committee, the sum and amount of \$1,000.00. This item was paid by a cashier's  
20 check of the National City Bank of New York.

(i) September 9, 1946, to the defendant Tom Linder, the sum and amount of \$1,500.00, out of account No. 144 at the brokerage firm of Harriss and Vose, at which time there was no money in said account.

(j) September 18, 1946, to Richard Tullis, an officer of the National Farm Committee, the sum and amount of \$2,500.00, paid from account No. 144 in the name of the defendant Robert M. Harriss at the brokerage firm of Harriss and Vose.

(k) September 24, 1946, to C. C. Hanson, in the sum and amount of \$250.00.

7. That at no time between the first and the tenth days of October 1946, did the defendant Robert M. Harriss file with the Clerk of the House of Representatives of the Congress of the United States covering the period embracing the calendar year 1946 down to and including September 30, 1946 and any of the days of said period from the first to the tenth of October 1946, a statement



setting out and furnishing the information required by section 305 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), concerning the expenditures made by him principally to aid in influencing legislation by the Congress of the United States as previously alleged in this count, whereby; the said defendant, Robert M. Harriss, on or about the 10th day of October 1946, at and in the District of Columbia of the United States and within the jurisdiction of this court, having, during said part of the year 1946 to and including September 30, 1946, made the expenditures set out in paragraph 6 of this count of this information for the purpose principally to aid in influencing and attempting to influence the aforesaid legislation by the Congress of the United States, unlawfully, wilfully and knowingly failed to file a statement with the Clerk of the House of Representatives of the Congress of the United States setting forth the information required to be filed by him by the provisions of section 305 of said Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

21 Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 305, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

#### COUNT VII

The United States Attorney in and for the District of Columbia of the United States, charges:

1. All of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, and 8, of Count I, and paragraphs 2, 3, 4, and 5 of Count VI of this information are hereby incorporated in this count of this information by reference thereto and realleged herein as fully and effectually as if the same were here repeated in full.

2. That during the fourth quarter (months of October, November, and December) of the year 1946, the defendant Robert M. Harriss for the purpose of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, on or about the dates, in the amounts and to the persons, firms, associations and corporations, set out below, made the following expenditures:

(a) October 31, 1946, to the defendant Ralph W. Moore, the sum and amount of \$25,000.00.

(b) November 18, 1946, to the defendant Ralph W. Moore, the sum and amount of \$10,000.00.

(c) December 5, 1946, to the defendant Ralph W. Moore, the sum and amount of \$15,000.00.



(d) October 31, 1946, to the defendant James E. McDonald, the sum and amount of \$6,000.00, by deposit in the account of the said McDonald at the brokerage firm of Harriss and Vose.

22 3. That at no time between the first and tenth days of January 1947, did the defendant Robert M. Harriss file with the Clerk of the House of Representatives of the Congress of the United States covering the period embracing the fourth quarter (months of October, November, and December) of the year 1946 and any of the days of said period from the first to the tenth of January 1947, a statement setting out and furnishing the information required by section 305 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), concerning the expenditures made by him principally to aid in influencing legislation by the Congress of the United States as previously alleged in this count, whereby; the said defendant, Robert M. Harriss, on or about the 10th day of January 1947, at and in the District of Columbia of the United States, and within the jurisdiction of this court, having, during said part of the year 1946, to-wit: the fourth quarter thereof, made the expenditures set out in paragraph 2 of this count of this information for the purpose principally to aid in influencing and attempting to influence the aforesaid legislation by the Congress of the United States, unlawfully, wilfully and knowingly failed to file a statement with the Clerk of the House of Representatives of the Congress of the United States setting forth the information required to be filed by him by the provisions of section 305 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 305, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

#### COUNT VIII

23 The United States Attorney in and for the District of Columbia of the United States, charges:

1. All of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, and 8, of Count I of this information are hereby incorporated in this count of this information by reference thereto, and realleged herein as fully and effectually as if the same were here repeated in full.

2. That during the period from August 2, 1946, and continuing thereafter until the filing and lodging of this information, the defendant James E. McDonald acted outside and apart from his official capacity and engaged himself for pay and for other con-

sideration on behalf of the defendant Ralph W. Moore and Robert M. Harriss for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agricultural commodities and commodity futures, and (b) the defeat of legislation by the Congress of the United States which would cause a decline of prices of agricultural commodities and commodity futures.

3. That for the purpose of influencing the aforesaid legislation by the Congress of the United States, the defendant James E. McDonald on divers dates between August 2, 1946, and the date of the filing and lodging of this information, testified before committees of Congress of the United States, sent letters and telegrams to members of Congress and officials of the executive branch of the Government of the United States, issued press releases which were distributed by the Association, The Southern Commissioners of Agriculture and the Farm Commissioners Council to members of the Congress of the United States, and made speeches at various functions of the two aforesaid organizations.

4. That in consideration of these services of the defendant James E. McDonald acting outside of and apart from his official capacity, the defendant Ralph W. Moore financed commodity trading accounts for the benefit of the said James E. McDonald with the brokerage firm of Merrill, Lynch, Pierce, Fenner and Beane and the brokerage firm of Harriss and Vose, during said period.

5. That in further consideration of said services of the  
24 defendant James E. McDonald, so acting outside of and apart from his official capacity, the defendant Robert M. Harriss made payments of money to the defendant James E. McDonald and deposited money in commodity trading accounts with the brokerage firm of Harriss and Vose, for the benefit of the said James E. McDonald, during said period.

6. That the defendant James E. McDonald, acting outside of and apart from his official capacity, in furtherance of the objects and purposes for which he had theretofore received money and other things of value from the defendants Ralph W. Moore and Robert M. Harriss, to be used principally to aid in the passage and defeat of legislation as averred in paragraphs 4 and 5 of this count of this information and to accomplish the same, did the following:

(a) On or about November 1, 1947, the defendants James E. McDonald and Tom Linder, with others, organized the Farm Commissioners Council, for the purpose of utilizing it in influencing and attempting to influence legislation by the Congress of the United States relative to farm commodities.

(b) On November 24, 1947, in a speech by the defendant James E. McDonald at a dinner held at the Mayflower Hotel, in Washington, D. C., at which dinner a large number of members of the Congress of the United States were present, said, among other things: "I ask you members of both Houses not to vote more rigid legislation or restrictive measures upon Texas and American agriculture."

(c) On November 25, 1947, the defendant James E. McDonald made a statement before the Senate Committee on Agriculture, using some of the materials prepared for him by one Dr. Clair, opposing proposed legislation which would tend to reduce the prices of farm commodities.

(d) On or about November 28, 1947, the defendant James E. McDonald, issued a press release in which he stated, among other things, "Government control of commodities is a dangerous thing."

(d) On or about June 7, 1947, the defendant James E. McDonald, sent to members of Congress copies of a telegram which he had under date of June 7, 1947, sent to President Harry S. Truman, Washington, D. C., stating in part that the President was receiving bad and destructive advice regarding the advisability of a lower price level.

7. That on or about March 1, 1948, at and in the District of Columbia of the United States and within the jurisdiction of this court, the defendant James E. McDonald, being then and there a person who, under the facts alleged above and the provisions of Section 308 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), was required, before the doing of the acts and things enumerated in paragraph 6 of this count of this information, to register with the Clerk of the House of Representatives and the Secretary of the Senate, both of the Congress of the United States, and to give to those officers in writing and under oath the information required by said section 308, did then and there unlawfully, wilfully and knowingly fail to register with the Clerk of the House of Representatives and the Secretary of the Senate, both of the Congress of the United States.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 308, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

#### COUNT IX

The United States Attorney in and for the District of Columbia of the United States, charges:

1. All of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8, of Count I of this information are hereby incorporated in this count of this information by reference thereto, and realleged as fully and effectually as if the same were here repeated in full.

26      2. That during the period from August 2, 1946, and continuing thereafter until the date of the filing and lodging of this information, the defendant Tom Linder, acted outside of and apart from his official capacity and engaged himself for pay and for other consideration on behalf of the defendants Ralph W. Moore and Robert M. Harriss for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agricultural commodities and commodity futures, and (b) the defeat of legislation by the Congress of the United States which would cause a decline of prices of agricultural commodities and commodity futures.

3. That for the purpose of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, the defendant Tom Linder on divers dates between August 2, 1946, and the date of the filing and lodging of this information, testified before Committees of Congress of the United States, sent letters and telegrams to members of Congress and officials of the executive branch of the Government of the United States, issued press releases which were distributed by the Association, the Southern Commissioners of Agriculture and the Farm Commissioners Council, to members of the Congress of the United States, and made speeches at various functions of the two aforesaid organizations.

4. That in consideration of these services of the defendant Tom Linder so acting outside of and apart from his official capacity, the defendant Ralph W. Moore made payments of money to the defendant Tom Linder and financed commodity trading accounts for the benefit of the defendant Linder with the brokerage firm of Harriss and Vose, during said period.

5. That in further consideration of these services of the defendant Tom Linder so acting outside of and apart from his official capacity, the defendant Robert M. Harriss made payments  
27      of money to the defendant Tom Linder and financed and deposited money in commodity trading accounts for the benefit of the defendant Tom Linder with the brokerage firm of Harriss and Vose, during said period.

6. That the defendant Tom Linder, acting outside of and apart from his official capacity, in furtherance of the objects and purposes for which he had theretofore received money and other things of value from the defendants Ralph W. Moore and Robert M. Harriss, to be used principally to aid in the passage and defeat of legislation as averred in paragraphs 4 and 5 of this count of

this information and to accomplish the same, did the following:

(a) On or about November 1, 1947, the defendants Tom Linder and James E. McDonald, with others, organized the Farm Commissioners Council, for the purpose of utilizing it in influencing and attempting to influence legislation by the Congress of the United States relative to farm commodities.

(b) On November 25, 1947, the defendant Tom Linder made a statement before the Senate Committee on Agriculture of the Congress of the United States, using material prepared by one Dr. Clair, opposing proposed legislation which would tend to reduce the prices of farm commodities.

(c) On or about the fall of the year 1946, at a dinner alleged to have been sponsored by the Association, Southern Commissioners of Agriculture, staged at the Mayflower Hotel, in Washington, D. C., at which about 200 members of Congress were present, the defendant Tom Linder delivered a speech in which he urged Congress to enact legislation ending the Office of Price Administration controls of prices.

7. That on or about January 1, 1948, at and in the District of Columbia of the United States and within the jurisdiction of this Court, the defendant Tom Linder, being then and there a person

28     who, under the facts alleged above and the provisions of Section 308 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), was required, before the doing of the acts and things enumerated in paragraph 6 of this count of this information, to register with the Clerk of the House of Representatives and the Secretary of the Senate, both of the Congress of the United States, and to give to those officers in writing and under oath the information required by said Section 308, did then and there unlawfully, wilfully and knowingly, fail to register with the Clerk of the House of Representatives and the Secretary of the Senate, both of the Congress of the United States.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 308, of the Federal Regulation of Lobbying (Act of August 2, 1946, 60 Stat. 840).

#### COUNT X

The United States Attorney in and for the District of Columbia of the United States, charges:

1. All of the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of Count I of this information are hereby incorporated in this count of this information by reference thereto and realleged herein, as fully and effectually as if the same were here repeated in full.

2. That the National Farm Committee which is hereby charged and made a defendant herein, is a corporation organized in the State of Texas and having an office in Washington, D. C.

3. That since August 2, 1946, and continuing to the date of 29 the filing and lodging of this information the principal purpose of the defendant National Farm Committee was to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agricultural commodities and commodity futures and (b) the defeat of legislation by the Congress of the United States which would cause a decline of prices of agricultural commodities and commodity futures.

4. That during the third quarter (months of July, August, and September) of the year 1946, the defendant National Farm Committee solicited, collected and received money to be used principally to aid in the accomplishment of the purposes set forth in paragraph 3 of this count of this information.

5. That during the third quarter (months of July, August, and September) of the year 1946, the defendant National Farm Committee received contributions, the exact amount of which is unknown, for the purposes set forth in paragraph 3 of this count of this information.

6. That during the third quarter (months of July, August, and September) of the year 1946, the defendant National Farm Committee, for the purpose of influencing and attempting to influence the aforesaid legislation by the Congress of the United States, on or about the dates, from the persons, firms, associations and corporation set out below, solicited, collected and received, the following contributions:

(a) On or about August 5, 1946, from the defendant Robert M. Harriss, the sum and amount of \$1,000, by means of a cashier's check drawn on the National City Bank of New York.

7. That at no time between the first and tenth days of October 1946, did the defendant National Farm Committee file with the Clerk of the House of Representatives of the Congress of the United States covering the period embracing the third quarter

(July, August, and September) of the year 1946 and any 30 of the days of said period from the first to the tenth of October 1946, a statement setting out and furnishing the information required by Section 305 of the Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840), concerning the contributions received by it to be used principally to aid in influencing and attempting to influence legislation by the Congress of the United States as previously alleged in this count, whereby; the said defendant National Farm Committee, on or about the tenth day of October 1946, at and in the District of

Columbia of the United States and within the jurisdiction of this court, having received the contributions set out in paragraph 6 of this count of this information for the purpose principally to aid in influencing and attempting to influence the aforesaid legislation by the Congress of the United States, unlawfully, wilfully and knowingly, failed to file a statement with the Clerk of the House of Representatives of the Congress of the United States setting forth the information required to be filed by it by the provisions of said Section 305 of said Federal Regulation of Lobbying Act.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

Violation of Section 305, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840).

GEORGE MORRIS FAY,  
*United States Attorney.*

31 In the United States District Court for the District of  
Columbia

[Title omitted.]

[File endorsement omitted.]

*Motion to dismiss Count 9 of information*

Filed January 9, 1950

Now comes Tom Linder, one of the above-named defendants, and moves to dismiss Count #9 of the Information against above defendants, on the ground that the count is bad in substance and that the count does not set out a criminal offense against said Tom Linder under the laws of the United States, upon the following grounds:

Count 9 should be dismissed for the reason that the acts Linder is charged with engaging himself to do and the acts he is alleged to have done were such as the laws of Georgia require its Commissioner of Agriculture to do, and hence are his official acts which he could perform without registering, to wit:

Georgia Code 1933, Section 5-204:

"Duties of Director; investigations, information, advice and assistance, prevention of waste.

"The Director shall be the chief executive officer of the Bureau of Markets and it shall be his duty to organize said Bureau and in co-operation with the Commissioner of Agriculture to plan and formulate the work to be done and carry out the provisions of this Chapter; and he shall—



“(a) Investigate methods and practices in connection with the production, handling, standardizing, grading, classifying, sorting, weighing, packing, transportation, storage, inspection and sale of agricultural products of all kinds within this State and all matters relevant thereto.

32       “(b) Gather, formulate, and disseminate information in such form and at such time as he shall deem advisable relating to matters mentioned in subsection (a) hereof in all their phases, and by correspondence, publication, advice, experimentation or by any other practical means shall keep producers, purchasers, and consumers informed of the supply and demand of all such products and of the markets at which the same can be best and most efficiently and most economically sold or procured.

“(e) *Secure in the performance of the duties of his office the cooperation and assistance of the office of markets of the Department of Agriculture of the United States, similar offices, bureau or departments of other States, and of the Georgia State College of Agriculture or of any other organization that may be of assistance therein.*” [Emphasis supplied.]

“(f) Assist and advise in the organization and the conduct of cooperative and other associations for improving relations and services among producers, distributors and consumers and methods and practices in connection with the several matters mentioned in subsection (a) hereof, and all matters relevant thereto.

“(h) Whenever it shall appear that any agricultural products are liable to spoil or waste or depreciate in value for lack of ready market, take such steps as may be deemed advisable to benefit the producers, distributors and consumers thereof, and to prevent waste.

“(i) Take such other measures as shall be proper for carrying out the purposes of this Chapter.”

2

The Count is fatally defective in that it charges a violation of the Regulation of Lobbying Act, which defendant avers violates the Constitution of the United States in the following particulars:

(a) Section 308 of said Act is unconstitutional in that it violates the First Amendment to said Constitution, which  
33       guarantees to defendant the right of free speech, freedom of the press, and the right to petition Congress for the redress of grievances, by forbidding the exercise of these rights by defendant under the penalties provided by the Regulation of Lobbying Act.

(b) Said Section is likewise unconstitutional and in violation of the Fifth Amendment to said Constitution, which guarantees



the defendant due process of law, because it deprives defendant of due process of law in that it is so vague and indefinite as to fail to give fair notice of what acts are punishable under its provisions, and in failing to set forth clearly the persons within the scope of the Act or to provide an understandable test to ascertain the guilt of those alleged to have violated it.

(c) Section 308 of said Lobbying Act is so all embracing in that it requires the person who has engaged himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of legislation "before doing anything in furtherance of such object" to register. "Doing anything" includes so much without naming any particular acts, even including all acts guaranteed by the First Amendment to the Constitution of the United States, such as those acts coming under the guarantee of Freedom of Speech, Press, the Right to Peaceably Assemble and Petition the Government for redress of grievances, and so many other acts innocent in their nature, yet which might be construed to come within the criminal offense, that men of common intelligence must guess at what is really meant shall constitute an offense, and by reason of same defendant is denied the due process of law which is guaranteed by the Fifth Amendment to the Constitution of the United States.

(d) Section 308 is both so vague and indefinite as to what persons the "title" shall apply when measured by the limitations set forth in Section 307 and Section 308 that persons of common intelligence would have to guess whether a particular person would be subject to prosecution under the law or whether a particular act under the law would subject a person to  
34 prosecution, and this violates the due process clause guaranteed by the Fifth Amendment.

(e) The Regulation of Lobbying Act is unconstitutional in that it is grossly discriminatory, to wit: Section 307 exempts political committees and all duly organized State and local committees of a political party. The laws regulating the formation of political parties are so lax that the present defendants or any three or more people may form a political party, either national, State or local and then be exempt from the terms of the Act, and free to lobby all they might want to.

(f) The Act as a whole is likewise unconstitutional in providing an additional penalty in Section 310 (b) (2 U. S. C., Sec. 269 (b)), prohibiting violators "from attempting to influence directly or indirectly, the passage or defeat of any proposed legislation, or from appearing before a committee of the Congress in support of or opposition to proposed legislation," the said additional penalty investing no discretion in the Court and not being limited to the period of time within which the person is engaged in violating

the law, and bearing in mind the failure of the Act to set forth an ascribable standard of guilt, constitutes a bill of pains and penalties within the prohibition of bills of attainder in Article I, Section 9 of the Constitution. Further, in depriving defendant of his right of free speech and right of petition within the First Amendment of the Constitution, the said additional penalty constitutes a "cruel and unusual punishment" within the meaning of the Eighth Amendment.

## 3

Count 9 is fatally defective in that it is alleged that this defendant acted outside of his official capacity when he engaged himself for pay, etc. and in performing certain acts. No facts are set forth to distinguish his acts as an individual from his acts as a public official or to show how and in what way this defendant acted in any other way save as the official Commissioner of Agriculture of the State of Georgia. As a public official of the

35      State of Georgia, this defendant is exempt under the provisions of the statute and this defendant is not required to make any registration as charged in said indictment. It is well known that a Commissioner of Agriculture is charged by the law of his State to do everything possible to cause the rise of farm commodities and to prevent the decline of commodities raised on the farm. To do otherwise would mean that a Commissioner of Agriculture was derelict in his duties.

## 4

Said Count 9 is fatally defective in that it is not shown in said indictment what legislation was pending before Congress, the passage of which would cause a rise in the price of agricultural commodities and commodity futures. Neither is it alleged in said count or in said indictment what agricultural commodities and commodity futures are referred to. This defendant is entitled to be placed on notice with what he is charged with doing and what legislation was pending, how long it had been pending and whether Congressmen or Senators or other public officials were advocating the passage of legislation to cause a rise in the price of agricultural commodities and commodity futures.

## 5

Paragraph 3 of this count is fatally defective in that it does not show how and in what way this defendant, and on what dates this defendant testified before the Committees of Congress, nor does it set forth the time and contents and to whom was sent the letters and telegrams mentioned to the Congress and officials of

the executive branch of the government of the United States. Neither does the government inform this defendant what press releases were distributed by the Commissioners of Agriculture and the Farm Commissioners Council, nor does it show what members of the Congress of the United States received these press releases, bulletins, letters, telegrams, etc., nor does it apprise this defendant what speeches he is alleged to have made before the Southern Commissioners of Agriculture and the Farm Commissioners Council at various functions, all as set out in paragraph 3 of the Count. This defendant is entitled, as a matter of right and law, to be apprised of what letters, telegrams, press releases and speeches the government charges are in violation of the law and, not being apprised even in the slightest degree what letters, what bulletins, what press releases and what speeches are complained of, this defendant says this paragraph of the count should be stricken in its entirety.

## 6

Paragraph 2 of said Count 9 is fatally defective in that it is not alleged what payments of money were made to this defendant and what commodity trading accounts for the benefit of this defendant are referred to, how much money was paid, where paid, the date of said accounts and all the details thereof and having failed to set forth the exact charges so that this defendant may adequately prepare his defense, said paragraph of said count is fatally defective and should be dismissed. Nowhere in said count is this defendant apprised as to when and what sums of money he is alleged to have received, nor what commodity trading accounts he is charged with having.

## 7

The Count fails to allege the defendant committed any particular act prohibited by the Lobbying Act of 1946. The Act itself does not specifically prohibit testifying before Committee of Congress; nor sending letters or telegrams to members of Congress and officials of the United States; nor the issuance of press releases; nor the making of speeches and statements; nor the organizing of the Farm Commissioners Council, all as charged in Paragraphs 3 and 6 of Count 9.

## 8

The construction placed upon the Lobbying Act by the Department of Justice in drawing Count 9 that the action of this defendant as set forth in paragraphs 3 and 6 of Count 9 constitutes a violation of the Lobbying Act is in direct violation of the First

37 Amendment to the Constitution of the United States, in that it denies to defendant his freedom of speech, freedom of the press and the right to petition the government for a redress of grievances, and if it was the intent of the Congress in enacting said law to make such acts penal, same would be unconstitutional as set out herein.

## 9

Paragraph 2 of Count 9 fails to allege what legislation defendant was attempting to influence by each of the acts alleged in paragraph 3 of said count, whether he was attempting to obtain the passage or the defeat of such legislation, how the legislation would affect the rise or bring about the decline of prices; what his testimony was before Congress; what the letters, telegrams, speeches and press releases contained; on what dates the offending words were spoken or written; nor to what persons they were spoken or written. Unless defendant is furnished with this information relative to the acts alleged in the information and upon which he is charged with a criminal offense, he will be unable to prepare proper defense and will be denied the due process of law as guaranteed him by the Fifth Amendment of the Constitution of the United States of America.

## 10

Count 9 apparently was brought on the theory that the principal purpose of defendant was lobbying and should be dismissed because it is nowhere alleged therein that the "principal purpose" of the defendant was to aid in the influencing of the passage or defeat of the legislation therein referred to, nor that his principal purpose was that of lobbying, Section 307 of the Lobbying Act clearly limiting the application of the Act to such persons. But on the contrary the Count shows that the principal purposes of defendant were to perform his duties as Commissioner of Agriculture and to further his personal interests in buying and selling agricultural commodities. Hence, this count fails to allege that defendant comes within the class of persons to whom the Lobbying Act applies.

38 It is no violation of Section 308 for a person to receive money or other things of value "to be used principally to aid in the passage and defeat of legislation" unless in addition thereto the person has been engaged for money or other consideration to lobby. It might be a violation of some other section of the Act, unless a report is made properly, as required by the Act, but not Section 308 as charged by Count 9.

## 11

Count 9 fails to set out a violation of Section 308 of the Regulation of Lobbying Act because it alleges that the failure to register, occurred on or about January 1, 1948, and does not allege that the defendant, after the time of failing to register did any act in furtherance of attempting to influence the passage or defeat of any legislation. Under Section 308, three things occur in consecutive order before there is a violation of the section, to-wit: A. An engagement for pay or consideration to lobby; B. Failure to register; C. The doing of the forbidden act. The Count charges that he failed to register **AFTER** the acts were committed.

## 12

This count charges that the failure to register constituted the offense rather than the acts set forth in subparagraphs (a), (b) and (c) of paragraph 6 of the Count. Movant says that the gravamen of the violation of Section 308, is not the failure to register, but the doing of acts forbidden; that those persons who engage themselves for pay or other consideration to lobby and fail to register, constitute that class of persons who alone can commit the offense by doing some act in furtherance of what they are employed to do.

## 13

Under Section 307, only two classes of persons can violate the Regulation of Lobbying Act: A. Those who solicit or receive money or other thing of value to be used, and, B. those whose principal purpose is to aid in the passage or defeat, or to influence the passage or defeat of legislation. Neither of these  
39 classes can violate Section 308 unless there is an engagement for pay or other consideration (employment) to lobby. The contradictory allegations in paragraph 6 with those in paragraphs 4 and 5 are such that defendant cannot determine whether he is charged with being in the first of these classes or within the second. This is a vital element of the offense and the failure of the government to allege such facts as will set forth this element, denies to the defendant the due process as guaranteed by the Fifth Amendment to the Constitution of the United States.

## 14

Count 9 fails to allege a violation of Section 308 of the Regulation of Lobbying Act, in that it fails to allege specifically that the defendant had engaged himself for pay and other consideration on behalf of Moore and Harriss, **BEFORE** he did the acts alleged in paragraph 6 of the Count, paragraph 2 of the Count

alleging that he engaged himself "during the period from August 2, 1946, and continuing thereafter until the date of filing and lodging of this information." The Information was not filed and lodged until August of 1949, under the allegations the engaging for pay could not have occurred at any time after the acts alleged in paragraph 6 were done. Hence no offense is charged.

15

Paragraph 2 of Count 1, incorporated into Count 9 by reference thereto, alleged that Linder had a personal financial interest in the buying and selling of futures contracts for agricultural commodities. The acts alleged to have been done by Linder are those any individual might legally do if acting for himself. And he would not be violating Section 308 of the Regulation of Lobbying Act, as the Act requires no one to register who lobbies for his own personal interests.

16

Count 9 is too contradictory in its allegations to be the basis for a criminal prosecution for violating Regulation of Lobbying Act.

40 (a) It charges Linder with doing the very things the laws of Georgia requires of the Commissioner of Agriculture, and tries to get around the exemption of Public Officers by alleging that he acted outside of his official capacity because he had a personal interest in the buying and selling of futures for commodities, yet proceeds to allege acts which any individual might do in lobbying for his individual personal interests without violating Section 308 of the Act:

(b) Paragraphs 2, 3, and 4 of the Count allege that Linder engaged himself for pay and other consideration on behalf of Ralph W. Moore and Robert M. Harriss to lobby, but paragraph 6 of the Count contradicts this allegation of employment and alleges that he received this particular money and other consideration from Moore and Harriss "to be used principally to aid in the passage \* \* \*" etc.

Wherefore, defendant says that Count 9 is bad in substance and he prays that said Count be dismissed.

Respectfully submitted,

Hugh Howell,  
HUGH HOWELL,  
511 Connally Building, Atlanta 3, Georgia,  
Victor Davidson,  
VICTOR DAVIDSON,  
Attorney at Law, Irwinton, Georgia,  
Attorneys for Tom Linder.

41 In the United States District Court for the District  
of Columbia

[Title omitted.]

[File endorsement omitted.]

*Motion to dismiss of defendant National Farm Committee*

Filed January 9, 1950

Comes now defendant National Farm Committee, by its attorneys, William E. Leahy, William J. Hughes, Jr., and Ben I. Melnicoff, and moves to dismiss the Information herein on the ground that Count 10 thereof is bad in substance on the following grounds:

## COUNT 10

(a) Defendant National Farm Committee hereby makes a part hereof the Motion to Dismiss filed herein by defendant Moore.

(b) Count 10 is fatally defective in that par. 3-6 inclusive fail to allege facts sufficient to advise the accused of the nature and cause of the accusation against him.

Respectfully submitted.

William E. Leahy,  
WILLIAM E. LEAHY,  
Wm. J. Hughes, Jr.,  
WILLIAM J. HUGHES, Jr.,  
Ben I. Melnicoff,  
BEN I. MELNICOFF,  
*Attorneys for Defendant,*  
*National Farm Committee.*

[Proof of service omitted in printing.]

42 In United States District Court for the  
District of Columbia

[Title omitted.]

[File endorsement omitted.]

*Motion to dismiss of defendant Moore*

Filed January 9, 1950

Comes now defendant Ralph W. Moore by his attorneys, William E. Leahy, William J. Hughes, Jr., and Ben I. Melnicoff and moves to dismiss the information herein on the ground that Counts 1-5 thereof are bad in substance on the following grounds:



## 1. COUNT 1

(a) This Count, although purporting to charge a violation of Section 308 of the Act against Moore alone, in reality charges a conspiracy between Harriss, Moore, McDonald, and Linder. This charge is by Information, not Indictment, and thus violates the Fifth Amendment of the Constitution and Rule 7 (a) of the Federal Rules of Criminal Procedure.

(b) The Information is fatally defective and prejudicial in violation of the Fifth Amendment in that it alleges in extenso improper acts and motives for alleged failure to register which are not pertinent to a charge of violation of Section 308.

(c) Count 1 is fatally defective in that the Act and its legislative history shows it was not intended to apply to individuals acting in their self-interest as distinguished from persons cloaking their acts behind the front of organizations, pressure groups, etc.

(d) Count 1 is invalid in that Sections 307 and 308 of the Lobbying Act are unconstitutional for the reason that they  
43 violate the guarantees of the First Amendment to the Constitution guaranteeing the right of free speech and to petition Congress for the redress of grievances. The said Act is likewise unconstitutional in violation of the Fifth Amendment, in depriving defendants of due process of law, in that it is so vague and indefinite as to fail to give fair notice of what acts are punishable under its provisions, and in failing to set forth clearly the persons within the scope of the Act or to provide an understandable test to ascertain guilt of alleged violators. The Act is also unconstitutional as being grossly discriminatory in failing to include officers and agents of the Government, who are not required to register or file reports.

(e) The Act is likewise unconstitutional in providing an additional penalty in Section 310 (b) (2 U. S. C., Sec. 269 (b)), prohibiting violators "from attempting to influence directly or indirectly, the passage or defeat of any proposed legislation, or from appearing before a committee of the Congress in support of or opposition to proposed legislation", the said additional penalty investing no discretion in the Court and not being limited to the period of time within which the person is engaged in violating the law, and bearing in mind the failure of the Act to set forth an ascribable standard of guilt, constitutes a bill of pains and penalties within the prohibition of bills of attainder in Article I, Section 9 of the Constitution. Further, in depriving defendants of their right to free speech and right of petition within the First Amendment of the Constitution, the said additional penalty constitutes a "cruel and unusual punishment" within the meaning of the Eighth Amendment.

(f) Count 1 fails to advise the defendant or defendants of the nature and cause of the accusation against them and is fatally defective in that it fails to allege facts sufficient to constitute a valid charge.

44 (g) And for such other reasons as are apparent upon the face of Count 1 and may be argued at the hearing hereof.

## 2. COUNT 2

(a) The Motion to Dismiss herein filed against Count 1 is realleged as to Count 2.

(b) This Count is invalid in that it is impossible to ascertain whether the defendant Moore is indicted as a principal or an agent. Section 305 applies only to a donee or agent.

## 3. COUNT 3

(a) The Motion to Dismiss herein filed against Counts 1 and 2 is hereby made a part hereof.

(b) Par. 2, Count 3, in alleging that Moore attempted to influence legislation by giving a dinner at the Mayflower Hotel shows on its face that the statute does not apply to such an activity.

## 4. COUNT 4

(a) Defendant makes a part hereof the Motion to Dismiss filed herein against Counts 1 and 2.

(b) There is no showing in Par. 2, Count 4, that the deposits listed in Par. 2 (a), (b) and (c), Count 4, were made for the purpose of influencing or attempting to influence legislation. Such allegations are mere conclusions.

## 5. COUNT 5

(a) Defendant hereby makes a part hereof his Motion to Dismiss filed against Counts 1 and 2 herein.

(b) There is no showing in Par. 2 (a) to (o) inclusive, that the acts alleged were done for the purpose of influencing or attempting to influence legislation, these allegations being  
45 bare conclusions. Section 305 is unconstitutional if construed to apply to such acts.

Respectfully submitted.

William E. Leahy,  
WILLIAM E. LEAHY,  
William J. Hughes, Jr.,  
WILLIAM J. HUGHES, JR.,  
Ben I. Melnicoff,  
BEN I. MELNICOFF,

*Attorneys for Defendant Ralph W. Moore.*

[Proof of service omitted in printing.]

46 In United States District Court for the District of Columbia

[Title omitted.]

[File endorsement omitted.]

*Motion to dismiss*

Filed January 9, 1950

Comes now defendant, Robert M. Harriss, by his attorneys, Burton K. Wheeler, Edward K. Wheeler, and George F. Hirmon, and moves to dismiss the information herein on the ground that each and every count thereof is bad in substance, on the following grounds:

1. COUNTS VI AND VII

(a) Counts VI and VII are fatally defective on their face in that they do not charge defendant Harriss with having committed any act to which Section 305 or any other section of the Federal Regulation of Lobbying Act is applicable.

(b) Said counts are further fatally defective on their face since they show that defendant Harris is not within the class of persons to whom Congress has declared, in Section 307, the provisions of the Act (including Section 305), to be applicable.

(c) Section 307 of the Act sets forth the definition of the persons to whom all provisions of the Act are applicable, and provides as follows (60 Stat. 841, 2 U. S. C. A. § 266):

47

"PERSONS TO WHOM APPLICABLE

"The provisions of *this title* shall apply to any person (except a political committee as defined in Chapter 8 of this title, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, *solicits, collects, or receives money or any other thing of value* to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

"(a) The passage or defeat of any legislation by the Congress of the United States.

"(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States." [Emphasis added.]

Nowhere in said Counts VI and VII or anywhere else in said information is it alleged that defendant Harris either by himself or through any employee or other persons in any manner whatsoever, directly or indirectly, *solicited, collected, or received any*

money or any other thing of value whatsoever for the purposes enumerated in Section 307 or for any other purpose. *The charges are simply that defendant Harriss expended money.* For this reason Counts VI and VII, as well as the information in its entirety, utterly fail to allege any fact which would constitute defendant Harriss a person to whom the application of Section 305 or any other provision of the title is strictly limited by the express restrictions of Section 307.

## 2. COUNTS I THROUGH X INCLUSIVE

(a) The information is bad in its entirety in that it charges only violations of the Federal Regulation of Lobbying Act, and said Act is in its entirety a nullity and void in that its plain purpose and necessary effect are, in direct violation of the Constitution of the United States, utterly to destroy the rights and freedoms and the protection of individual citizens of the United States, which said Constitution guarantees and prescribes.

48 (b) The First Amendment to the Constitution declares: "Congress shall make no law respecting an establishment of religion or the free exercise thereof; *or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*" [Emphasis added.] Said Federal Regulation of Lobbying Act would render criminal the peaceable assembly of Americans for the discussion of matters of public interest where there had been no previous registration with Federal agents.

(c) Said Act, furthermore, would render criminal the free discussion by Americans of their government and of public matters where they had not previous to such discussion registered with Federal agents.

(d) Said Act, furthermore, would render criminal petitions for redress of grievances made by Americans to their Government where they had not previously registered with Federal agents.

(e) Said Act is likewise unconstitutional in violation of the Fifth Amendment, in depriving defendants of due process of law, in that it is so vague and indefinite as to fail to give fair notice of what acts are punishable under its provisions, or to provide an understandable test to ascertain guilt of alleged violators.

(f) Said Act is likewise unconstitutional in violation of the Sixth Amendment, in that the criteria of guilt which said Act attempts to set forth are incomprehensible and utterly devoid of any ascertainable meaning, and as a consequence it is impossible for any information filed against any defendant under said Act to inform the defendant of the nature and cause of the accusation against him.

(g) Said Act is likewise unconstitutional in providing an additional penalty in Section 310 (b) (2 U. S. C. A., Sec. 269 (b)), prohibiting violators "from attempting to influence directly or indirectly, the passage or defeat of any proposed legislation, or from appearing before a committee of the Congress in support of or opposition to proposed legislation," the said additional penalty investing no discretion in the Court and not being limited to the period of time within which the person is engaged in violating the law, and bearing in mind the failure of the Act to set forth any ascertainable standard of guilt, constitutes a bill of pains and penalties within the prohibition of bills of attainder of Article I, Section 9 of the Constitution. Further, in depriving defendants of their right of free speech and right of petition within the First Amendment of the Constitution, the said additional penalty constitutes a "cruel and unusual punishment" within the meaning of the Eighth Amendment.

(h) The Act is likewise unconstitutional as being grossly discriminatory in failing to include officers and agents of the government, who are not required to register or file reports.

(i) Defendant Harriss incorporates herein by reference, insofar as applicable, the allegations above set forth in paragraphs 1 (a), (b), and (c) hereof.

(j) And said Act is unconstitutional for such other reasons as are apparent upon the face thereof and may be argued at the hearing hereof.

Wherefore:

Defendant Harriss avers that said information is bad in its entirety and in particular that Counts VI and VII of the information which purport to charge offenses against him are bad in substance and said information including said Counts VI and VII should be dismissed.

B. K. Wheeler,  
BURTON K. WHEELER,  
E. K. Wheeler,  
EDWARD K. WHEELER,  
George F. Hirmon,  
GEORGE F. HIRMON,

*All of 704 Southern Building, Washington 5, D. C.,  
Attorneys for Defendant Robert M. Harriss.*

[Certificate of service, omitted in printing.]

52 In United States District Court for the District of Columbia

[Title omitted.]

[File endorsement omitted.]

*Amendment to motion of Tom Lindner to dismiss count 9 of the information.*

Filed November 14, 1950

Now comes Tom Lindner and with leave of court first obtained amends his motion to dismiss Count 9 of the Information as follows:

1

Defendant adds new paragraphs numbered 17 and 18 to read as follows:

Paragraph 17

The offense which Count 9 charges defendant with is violating Section 308 of the Regulation of Lobbying Act.

The allegations of paragraphs 4 and 5 and 6 are the vital portions of the charge, yet the allegations of paragraph 6 that the count fails to set out with sufficient certainty the offense charged so as to apprise the accused of the nature of the charge against him. Paragraphs 4 and 5 of the count allege that the pay and consideration which defendant received was for the services rendered as described in paragraph 3 of the count, but paragraph 6 of the Count alleges that the defendant—

“\* \* \* in furtherance of the objects and purposes for which he had theretofore received money and other things of value from the defendants Ralph W. Moore and Robert M. Harriss to be used principally to aid in the passage and defeat of legislation as averred in paragraphs 4 and 5 of this count \* \* \*”

53 It is no violation of Section 308 of the act for a person to fail to register just because he receives money or other thing of value “to be used principally to aid in the passage and defeat of legislation” \* \* \*

The Count by reasons set forth in the foregoing allegations fail to inform the defendant of the nature and cause of the accusation and hence he is denied his rights guaranteed by the 6th Amendment to the Constitution of the United States.

Paragraph 18

Paragraphs 2, 4, 5, and 6 of the count allege that the defendant in doing the things charged, was acting outside his official capacity. Yet in no instance in the count is there any allegation by

which the court can determine that the defendant was acting outside his official capacity. Neither is the defendant informed of the nature and cause of the accusation, so as to prepare adequate defense. The allegations that he was acting outside his official capacity are mere conclusions of the pleader and without acts or facts alleged to sustain the charge. If he was acting in his official capacity, he is guilty of no offense. The defendant is entitled to know upon what acts or facts the above conclusion was based that he was acting outside his official capacity. And he is thus being denied the rights guaranteed by the 6th Amendment to the Constitution of the United States.

(a) Likewise all that portion of paragraph 6 of Count 1, which allege the manner and the purposes of the defendants in using the organization named therein, are mere conclusions of the pleader and are subject to the same objections as just set forth.

Wherefore, defendant prays that said Count 9 be dismissed.

VICTOR DAVIDSON,

Hugh Howell,

By HUGH HOWELL,

*Attorneys for Defendant, Tom Linder.*

Connally Building, Atlanta, Ga.

Irwinton, Ga.

[Proof of service, omitted in printing.]

54                    In United States District Court for the  
                         District of Columbia

[Title omitted.]

[File endorsement omitted.]

*Suggestion of death of defendant and order to dismiss*

Filed January 30, 1953

Now comes William A. Kehoe, Jr., attorney for James E. McDonald, one of the defendants in the above-captioned cause, and suggests the death of said defendant, James E. McDonald, on June 12, 1952, at San Benito, Texas, and it appearing to the Court that the above-entitled cause does not survive, and nothing appearing to the contrary, it is by the Court this 30th day of January 1953,

Ordered that said information filed herein against said defendant, James E. McDonald, stand abated and that the same be dismissed as to said defendant.

ALEXANDER HOLTZOFF,

*Judge.*



57 In United States District Court for the District of  
Columbia

*Opinion of the Court*

January 30, 1953

The COURT (Holtzoff, J.). In the case of National Association of Manufacturers v. McGrath, a Three-Judge Court of this district held that section 305 of the Regulation of Lobbying Act was unconstitutional. U. S. Code, Title 2, chapter 8 (a) section 264.

This conclusion was based on two grounds. First: That the definition of the offense, as contained in the statute, was too indefinite to comply with the requirement of constitutional law, and the due process clause particularly, that a criminal statute must define a crime with sufficient precision to apprise persons as to what would constitute a violation.

The second ground was that the penalty prescribed by the statute was unconstitutional in that in addition to a fine or imprisonment, or both, it proscribed any person convicted under the statute from attempting to influence the passage or defeat of legislation for a period of three years. The Court held that this provision was a violation of the constitutional rights of every citizen to petition Congress.

58 The penalty provision of the Act is applicable not only to violations of section 305, but also to violations of section 308, which may well be severed under the separability clause. To repeat, the penalty, however, applies to both aspects of this statute.

The Court does not agree that the separability clause goes far enough to make it possible to cut the penalty clause in two. In fact, if the present contention now advanced by the Government were correct, then the decision in the National Association of Manufacturers case was erroneous in so far as this ground of the decision was concerned. The Court feels that that case is at least *stare decisis*, if not *res judicata*.

To be sure, the judgment in that case was set aside and the complaint dismissed by the Supreme Court, but merely on the ground that the case had become moot during the progress of the litigation. The Court did not either affirm or reverse the decision of this Court holding this statute unconstitutional, but merely failed to pass on this point. It may well be that the judgment in that case, as I stated before, is not *res judicata*, but the opinion is *stare decisis*, and will be followed by the Court.

The Court, therefore, is constrained to reach the conclusion, first, that the two penalty clauses of the Act cannot be severed, but constitute a single penalty; and, second, that since it

59 applies to section 308 as well as to section 305, and since the penalty clause is unconstitutional, section 308 must be deemed unconstitutional as well as section 305.

On this ground the motion to dismiss the information is granted.

The Court wishes to thank all counsel on both sides for the great assistance that has been rendered by them, not only by the oral discussion but by the very able memoranda that have been filed here by all parties.

(Thereupon, the above-entitled proceedings were concluded.)

[Reporter's certificate to foregoing transcript omitted in printing.]

60 In United States District Court for the District of  
Columbia

Criminal No. 1212-49

Charge, Vio. S 305, Federal Regulation of Lobbying Act

UNITED STATES

*vs.*

No. 1. ROBERT M. HARRISS, No. 2. RALPH W. MOORE, No. 3.  
JAMES E. McDONALD, No. 4. TOM LINDER, No. 5. NATIONAL  
FARM COMMITTEE, DEFENDANTS

*Order dismissing information*

Filed January 30, 1953

On this 30th day of January 1953, came the Attorney of the Department of Justice, the defendants by their counsel, Burton K. Wheeler, William Leahy, Benjamin I. Melincoff, William A. Kehoe, Jr., and Victor Davidson, Esquires; whereupon, a suggestion of death is filed as to defendant James E. McDonald; thereupon, the motion of the defendants to dismiss the indictment, coming on to be heard, after argument by counsel is by the Court granted; whereupon, a dismissal is entered and the defendants are discharged.

By direction of:

ALEXANDER HOLTZOFF,

*Presiding Judge Criminal Court No. 1.*

HARRY M. HULL,

*Clerk.*

By (Name illegible),

*Deputy Clerk.*

Present:

By BENJAMIN F. POLLACK,

*Department of Justice Attorney.*

CHLOE MACREYNOLDS,

*Official Reporter.*

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61-75 In District Court of the United States for the  
District of Columbia

[Title omitted.]

[File endorsement omitted.]

*Notice of appeal*

Filed February 27, 1953

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the District of Columbia, entered January 30, 1953, dismissing the information in the above-entitled case.

Walter J. Cummings, Jr.,

WALTER J. CUMMINGS, JR.,

*Solicitor General,*

*Department of Justice, Washington, D. C.*

Dated February 27, 1953.

76 [Service of appeal papers, omitted in printing.]

78 [Designation of record on appeal, omitted in printing.]

80 *Docket entries*

In United States District Court for the District of Columbia

Parties	Attorneys	Criminal No. 1212-49
UNITED STATES vs. 1. ROBERT M. HARRISS, 2. RALPH W. MOORE, 3. JAMES E. MC- DONALD, 4. TOM LINDER, 5. NATIONAL FARM COMMITTEE Case closed	U. S. ATTORNEY No. 1: Burton K. Wheeler, Edward K. Wheeler, George F. Hirmon. No. 3: Maury Hughes and/or Wm. A. Kehoe, Jr. Orig. G. J. No.	Charge: Violation of Section 305, Federal Regulation of Lobbying Act (Act of August 2, 1946, 60 Stat. 840). Bond: 1. \$ ..... 2. \$ ..... 3. \$ ..... 4. \$ ..... 5. \$ ..... 6. \$ .....

Date	Proceedings
1949	
Aug. 31	Information, filed.
Sept. 13	No. 1: Appearance of Burton K. Wheeler, Edward K. Wheeler, and George F. Hirmon entered, filed.
Nov. 16	No. 3: Appearance Maury Hughes and/or William A. Kehoe, Jr., entered, filed.
23	No. 3: Appearance of William A. Kehoe, Jr., entered as associate attorney of Maury Hughes, filed.
25	No. 1: Telegram authorizing Burton K. Wheeler to enter plea on behalf of defendant, filed.
28	No. 4: Appearance Howell and Davidson entered, filed. Authorization from defendant to counsel to enter plea, filed.
	No. 3: Authorization from defendant to counsel to enter plea, filed.
	Each: Arraigned, Plea Not Guilty entered by counsel for defendant. Counsel given until 1/9/50 for filing of motions. HOLTZOFF, J. Cert. filed 11/29/49.
	No. 1: Attorney Edward K. Wheeler present.
	No. 2: Attorney Benjamin I. Melincoff present.
	No. 3: Attorney William A. Kehoe present.
	No. 4: Attorneys Howell and Davidson present.
	No. 5: Attorney Benjamin I. Melincoff present.
1950	
81 Jan. 9	No. 4: Defendant's motion to dismiss Count Nine of information and Points and Authorities in support thereof, filed.
	Defendant's motion to strike surplusage in Count Nine, filed.
	Defendant's motion for Bill of Particulars, filed.
9	No. 3: Motion of Defendant to strike certain parts of the information as surplusage, filed, and Points and Authorities in Support thereof filed.
	Motion of defendant to dismiss information, filed, and Points and authorities in support thereof, filed.
9	No. 2: Motion of defendant to strike certain parts of the information as surplusage and points and authorities in support thereof, filed.
	Motion of defendant for Bill of Particulars and points and authorities in support thereof, filed.
	Motion to dismiss and points and authorities in support thereof, filed.
9	No. 5: Motion for Bill of Particulars and points and authorities in support thereof, filed.
	Motion to Strike certain parts of the Information is surplusage and points and authorities in support thereof, filed.
	Motion to dismiss and points and authorities in support thereof, filed.
9	No. 1: Motion to dismiss and points and authorities in support thereof, filed.
	Motion of defendant for Bill of Particulars and points and authorities in support thereof, filed.
27	Each: Memorandum of Law in behalf of the United States of America in opposition to the motions of the defendants for a Bill of particulars, filed.
	Memorandum of Law in behalf of the United States of America in opposition to the motions of the defendants to strike certain parts of the information, filed.
	Memorandum of Law in behalf of the United States of America in opposition to the motions of the defendants to dismiss the information, filed.
Nov. 15	No. 4: Amendment to motion of Tom Linder to dismiss count 9 of the Information, filed.
1952	
May 13	No. 1: Transcript of Proceedings, Jan. 17, 1952, Pages 1-3, filed. (Court Clks. Copy.)
1953	
Jan. 30	No. 3: Suggestion of death of defendant and order to dismiss information as to said defendant, filed.
	Each:
	Motion of defendants to dismiss information argued and granted. Dismissal entered, defendants discharged.
	Substitute motion of law in behalf of the U. S. A. in opposition to the motion of the defendants to dismiss the information, filed.
82 Jan. 30	Each: Attorneys Burton K. Wheeler, William Leahy, Benjamin I. Melincoff, William A. Kehoe, Jr., Victor Davidson present. HOLTZOFF, J. Cert. filed. (Reporter, MacReynolds.)
Feb. 27	Each: Notice of Appeal, to the Supreme Court of the United States, filed. Statement as to jurisdiction, Appendix A, Appendix B, filed. (Filed by U. S., Walter J. Cummings, Jr. Solicitor General, Dept. of Justice.)
Mar. 11	Each: Designation of Record on Appeal and Notice, filed. Cert. of Serv.
Apr. 3	Each: Transcript of Proceedings, Fri., Jan. 30, 1953, filed. (Appellant's Copy.)

83

[Clerk's certificate to foregoing transcript omitted in printing.]

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84

In Supreme Court of the United States  
October Term, 1952

No. 700

[Title omitted.]

[File endorsement omitted.]

*Statement of points to be relied upon and designation of record*

Filed May 27, 1953

Pursuant to Rule 13, paragraph 9 of the Rules of this Court, appellant states that it intends to rely upon the following points.

The District Court erred:

1. In dismissing each count of the information.
  2. In holding that Section 305 (a) of the Federal Regulation of Lobbying Act is unconstitutionally vague and indefinite because, by incorporating Section 307 of the Act, it applies to any person who receives contributions or expends money for the purpose of influencing "directly or indirectly" the passage or defeat of federal legislation.
  3. In holding that the penalty imposed by Section 310 (b) of the Act, prohibiting convicted violators from lobbying for a three-year period, is unconstitutional as in contravention of the First Amendment.
  4. In holding that the invalidity of Section 310 (b) in itself serves to invalidate Sections 305 and 308 of the Act, despite the inclusion in the Act of a separability clause.
- 85 Appellant deems the entire record, as filed, necessary for the consideration of the points relied upon.

Robert L. Stern,  
ROBERT L. STERN,  
*Acting Solicitor General.*

87

Supreme Court of the United States  
No. 700, October Term, 1952

[Title omitted.]

*Order noting probable jurisdiction*

May 4, 1953

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

# **JURISDICTIONAL STATEMENT**

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLUMBIA

---

Criminal Action No. 1212-49

UNITED STATES OF AMERICA

*v.*

ROBERT M. HARRISS, RALPH W. MOORE, JAMES E.  
MCDONALD, TOM LINDER, AND NATIONAL FARM  
COMMITTEE, DEFENDANTS

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STATEMENT AS TO JURISDICTION

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In compliance with Rule 37(a)(1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause dismissing the indictment.

OPINION BELOW

The opinion of the District Court dismissing the information has not yet been reported. A copy is annexed hereto as Appendix A.



## JURISDICTION

The opinion and order of the District Court were entered January 30, 1953. The jurisdiction of the Supreme Court to review on direct appeal a judgment dismissing an information based on the unconstitutionality of the statute on which the information is founded is conferred by 18 U. S. C. 3731. See also Rules 37(a)(2) and 45(a), F. R. Crim. P.

## QUESTIONS PRESENTED

Section 305(a) of the Federal Regulation of Lobbying Act requires that certain records be kept and reports filed by persons receiving contributions or expending money for the purpose designated in Section 307, *i.e.*, to influence, directly or indirectly, the passage or defeat of federal legislation. Section 308(a) requires any person who engages himself for pay for the purpose of attempting to influence the passage or defeat of legislation to register before doing anything in furtherance of such object. Section 310(a) makes violation of any of the disclosure requirements a misdemeanor, punishable by fine or imprisonment, and Section 310(b) prohibits, for a period of three years, any person convicted of such a misdemeanor "from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation." The questions presented are:

1. Whether the purposes specified in Section 307 are so vague and indefinite as to render Section

305(a) invalid as in violation of the due process clause.

2. Whether the penalty in Section 310(b) is unconstitutional as in violation of the rights of freedom of speech and petition under the First Amendment.

3. If the preceding question be answered in the affirmative, whether the unconstitutionality of that prohibition in itself serves to invalidate Sections 305 and 308, despite the inclusion in the Act of a separability clause.

#### STATUTE INVOLVED

The full text of the Federal Regulation of Lobbying Act, 60 Stat. 812, 839, 2 U. S. C. 261-270, is set forth in Appendix B.

#### STATEMENT

An information in ten counts charging violations of the Federal Regulation of Lobbying Act was returned against defendants in the United States District Court for the District of Columbia. Counts one, eight, and nine, against defendants Moore, McDonald and Linder, respectively, were laid under Section 308 of the Act, and charged each such defendant with being a person who engaged himself for pay for the purpose of attempting to influence the passage of legislation relating to the price of farm commodities, without having registered as required by the statute. The other counts were laid under Section 305. Counts two to five, inclusive, against Moore, and counts six and seven against Harriss charged each of them with having

made various specified expenditures for the purpose principally of influencing, directly or indirectly, legislation bearing on the price of agricultural commodities, and failing to file the reports required by Section 305. Count 10 charged that the National Farm Committee, whose principal purpose was to influence, directly or indirectly, legislation relating to commodity prices, solicited and received specified sums of money for such purposes and failed to file the required reports.

The defendants moved to dismiss the information, contending that the statute was unconstitutionally vague and indefinite and an unconstitutional infringement of the rights guaranteed by the First Amendment.

The District Court granted the motion, adopting for this case the opinion of a three-judge court of the same district in *National Association of Manufacturers v. McGrath*, 103 F. Supp. 510, reversed on grounds of mootness, 344 U. S. 804. In that opinion, the District Court had held that the language of Section 307, making the disclosure requirements applicable to any person "whose principal purpose" was "to influence, directly or indirectly, the passage or defeat of any legislation", is so vague and indefinite as to be in violation of the Fifth Amendment; that the prohibition in Section 310(b) is repugnant to the constitutional guaranty of freedom of speech and of petition; that Sections 303 through 307 of the Act are unconstitutional for the additional reason that the penalty attached to

their violation by Section 310(b) contravenes the First Amendment.

The decision in the *N. A. M.* case had not passed upon the validity of Section 308. As to that section, the District Court in the instant case held that the invalidity of the penalty clause of Section 310(b), which applies to violations of Section 308, serves to invalidate Section 308 despite the separability clause in the statute.

#### THE QUESTIONS ARE SUBSTANTIAL

The decision below invalidates the entire Lobbying Act passed by Congress as part of its program for legislative reorganization. The holding that Section 305 is unconstitutionally indefinite, predicated on the opinion of the District Court in *National Association of Manufacturers v. McGrath*, 103 F. Supp. 510, reversed on ground of mootness, 344 U. S. 804, is based, not on the language of Section 305 itself, but on the language in Section 307 which is incorporated into Section 305, and which applies to Sections 304 and 306 as well. In addition, the decision below holds invalid Sections 308 and 310. Thus no operative section of the Lobbying Act has validity under the decision below.

That Act which, through its disclosure requirements, was designed to aid Congress in evaluating representations made to it by representatives of various pressure groups (see S. Reps. 1011 and 1400, 79th Cong., 2d sess.) advances an interest of vital importance to the proper functioning of representative government. The question whether the

District Court erred in holding the Act unconstitutional is thus clearly a substantial one.

1. We submit that the District Court erred in holding, in accordance with the *N. A. M.* decision, that Section 305 is unconstitutionally vague and indefinite because it applies to any person who receives contributions or expends money for the purpose of influencing, "directly or indirectly", the passage or defeat of federal legislation. The quoted clause, found too indefinite in the opinion adopted by the court below, gives clear warning to potential violators of the type of conduct which gives rise to the duty to report contributions and expenditures. Certainly as applied to the facts set forth in the information in this case, relating to expenditure or receipt of specified sums for the purpose of influencing legislation dealing with the specific subject of commodity prices, there can be no question but that the statute was sufficiently definite to warn these defendants of their duty to file reports.

The test of whether a statute is sufficiently definite to meet constitutional requirements is whether the statute adequately gives notice of the required conduct to one who would avoid its penalties. *Jordan v. De George*, 341 U. S. 223, 231-232; *Dennis v. United States*, 341 U. S. 494, 515 (opinion of Vinson, C. J.); *United States v. Hood*, 343 U. S. 148, 151; *United States v. Spector*, 343 U. S. 169. But "no more than a reasonable degree of certainty can be demanded", since "few words possess the precision of mathematical symbols." Accordingly,

“most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions.” *Boyce Motor Lines v. United States*, 342 U. S. 337, 340. The statute meets the constitutional test of “reasonable degree of certainty” even though “one who deliberately goes perilously close to an area of proscribed conduct [is required to] take the risk that he may cross the line.” *Id.* The boundaries of criminal statutes are rarely, if ever, marked with precise accuracy; and the presence of any difficult “border line” or “peripheral” case does not invalidate a statute where there is a hard core of circumstances to which the statute applies and as to which the ordinary person would have no doubt as to its application. *Jordan v. De George, supra*; *United States v. Wurzbach*, 280 U. S. 396, 399; *Nash v. United States*, 229 U. S. 373.

The fact that the Act requires a *purpose* or *intent* to influence legislation, furnishes further rebuttal of the argument that the Act is too vague. *Boyce Motor Lines v. United States*, 342 U. S. 337, 342; *Dennis v. United States*, 341 U. S. 494, 515-516 (opinion of Vinson, C. J.); *Williams v. United States*, 341 U. S. 97, 101-102; *Screws v. United States*, 325 U. S. 91, 101-103.

2. The decision below also adopted the holding of the *N. A. M.* case that Section 310(b), which prohibits convicted violators of the Act from lobbying for a three-year period, contravenes the First

Amendment. The short answer to this assertion is that if conviction of some offenses may forever deprive a person of his civil rights, and if conviction of some offenses may disqualify the offender from thereafter holding any office of honor, trust, or profit under the United States, then *a fortiori* lobbyists convicted of violating the Lobbying Act may, constitutionally, for a three-year period, be prohibited from lobbying.

3. The District Court did not hold that Section 308 is invalid in itself, but merely that both Sections 308 and 305 are rendered invalid by the fact that the penalty made applicable thereto by Section 310(b) is unconstitutional. This holding was clearly erroneous in the face of the separability clause which provides that "if any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby."

Section 310(a) makes a violation of either Section 305 or 308 a misdemeanor, punishable by a fine of not more than \$5,000 or by imprisonment for not more than twelve months, or by both such fine and imprisonment. The prohibition in subsection (b) against acting as a lobbyist for three years after conviction on penalty of committing a felony is expressly stated to be in "addition to the penalties provided for in subsection (a)."

Thus if subsection 310(b) were eliminated from the statute, there would still be left a statute defin-



ing specific duties and providing a specific penalty for violation of any such duty. The elimination of the additional penalty in 310(b) in no way affects the construction of the Act or the nature of the duties proscribed thereby. It is difficult to conceive of a section which could be severed with less effect on the structure of the statute as a whole. Thus any possible invalidity in Section 310(b) does not invalidate either Section 305 or 308. See *Electric Bond & Share Co. v. Securities and Exchange Commission*, 303 U. S. 419, 433-437; *Watson v. Buck*, 313 U. S. 387, 395-397.

It is submitted that the decision of the District Court is erroneous and that the questions presented by this appeal are substantial ones which should be settled by the Supreme Court.

Respectfully submitted,

WALTER J. CUMMINGS, JR.,  
*Solicitor General.*

## APPENDIX A

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA

Criminal No. 1212-49

UNITED STATES OF AMERICA

v.

ROBERT M. HARRISS, RALPH W. MOORE, JAMES E.  
MCDONALD, TOM LINDER, AND NATIONAL FARM  
COMMITTEE, DEFENDANTS

## OPINION

Benjamin F. Pollock, Esq., of Washington, D. C.,  
for the United States.

Burton K. Wheeler, Esq., Edward K. Wheeler,  
Esq., and George J. Hirmon, Esq., all of Washing-  
ton, D. C., for the defendant Robert M. Harriss.

William E. Leahy, Esq., and Ben I. Melnicoff,  
Esq., both of Washington, D. C., for the defendants  
Ralph W. Moore and National Farm Committee.

Hugh Howell, Esq., and Victor Davidson, Esq.,  
both of Atlanta, Georgia, for the defendant Tom  
Linder.

In the case of *National Association of Manufactur-  
ers v. McGrath*, 103 F. Supp. 510, a Three-Judge  
Court of this district held that Section 305 of the  
Regulation of Lobbying Act was unconstitutional,  
U. S. Code, Title 2, Chapter 8A, Section 264.

This conclusion was based on two grounds. First,  
that the definition of the offense, as contained in  
the statute, was too indefinite to comply with the  
requirement of constitutional law, and the due

process clause particularly, that a criminal statute must define a crime with sufficient precision to apprise persons as to what would constitute a violation.

The second ground was that the penalty prescribed by the statute was unconstitutional in that, in addition to a fine or imprisonment, or both, it proscribed any person convicted under the statute from attempting to influence the passage or defeat of legislation for a period of three years. The Court held that this provision was a violation of the constitutional rights of every citizen to petition Congress.

The penalty provision of the Act is applicable not only to violations of section 305, but also to violations of section 308, which may well be severed under the separability clause. To repeat, the penalty, however, applies to both aspects of this statute.

The Court does not agree that the separability clause goes far enough to make it possible to cut the penalty clause in two. In fact, if the present contention now advanced by the Government were correct, then the decision in the National Association of Manufacturers case was erroneous insofar as this ground of the decision was concerned. The Court feels that that case is not at least *stare decisis*, if not *res judicata*.

To be sure, the judgment in that case was set aside and the complaint dismissed by the Supreme Court, but merely on the ground that the case had become moot during the progress of the litigation, 344 U.S. 804. The Court did not either affirm or reverse the decision of this Court holding this statute unconstitutional, but merely failed to pass

on this point. It may well be that the judgment in that case, as I stated before, is not *res judicata*, but the opinion is *stare decisis*, and will be followed by the Court.

The Court, therefore, is constrained to reach the conclusion, first, that the two penalty clauses of the Act cannot be severed, but constitute a single penalty; and, second, that since it applies to section 308, as well as to section 305, and since the penalty clause is unconstitutional, section 308 must be deemed unconstitutional as well as section 305.

On this ground the motion to dismiss the information is granted.

The Court wishes to thank all counsel on both sides for the great assistance that has been rendered by them, not only by the oral discussion but by the very able memoranda that have been filed here by all parties.

(s) ALEXANDER HOLTZOFF,  
*United States District Judge.*

January 30, 1953.

## APPENDIX B

LEGISLATIVE REORGANIZATION ACT OF  
1946

1. Title III—Regulation of Lobbying Act (60 Stat. 812, 839; 2 U.S.C. 261-270)

## SHORT TITLE

SEC. 301. This title may be cited as the "Federal Regulation of Lobbying Act".

## DEFINITIONS

SEC. 302. When used in this title—

(a) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

(b) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(c) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(d) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(e) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.

## DETAILED ACCOUNTS OF CONTRIBUTIONS

SEC. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of—

(1) all contributions of any amount or of any value whatsoever;

(2) the name and address of every person making any such contribution of \$500 or more and the date thereof;

(3) all expenditures made by or on behalf of such organization or funds; and

(4) the name and address of every person to whom any such expenditure is made and the date thereof.

(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding \$10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

## RECEIPTS FOR CONTRIBUTIONS

SEC. 304. Every individual who receives a contribution of \$500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received.

## STATEMENTS TO BE FILED WITH CLERK OF HOUSE

SEC. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing—

(1) the name and address of each person who has made a contribution of \$500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of \$500 or more to such person since the effective date of this title;

(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

(3) the total sum of all contributions made to or for such person during the calendar year;

(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

(6) the total sum of expenditures made by or on behalf of such person during the calendar year.



(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

#### STATEMENT PRESERVED FOR TWO YEARS

SEC. 306. A statement required by this title to be filed with the Clerk—

(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its nonreceipt;

(b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of this office, and shall be open to public inspection.

#### PERSONS TO WHOM APPLICABLE

SEC. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which

person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

#### REGISTRATION WITH SECRETARY OF THE SENATE AND CLERK OF THE HOUSE

SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or edito-

rials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

#### REPORTS AND STATEMENTS TO BE MADE UNDER OATH

SEC. 309. All reports and statements required under this title shall be made under oath, before an officer authorized by law to administer oaths.

## PENALTIES

SEC. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

## EXEMPTION

SEC. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.

## 2. Separability Clause (60 Stat. 812, 814)

SEC. 1 (b) *Separability Clause*. If any provision of this Act or the application thereof to any

person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

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# ***In the Supreme Court of the United States***

OCTOBER TERM, 1953

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No. 32

UNITED STATES OF AMERICA, APPELLANT

*v.*

ROBERT M. HARRISS, RALPH W. MOORE, TOM LINDER,  
AND NATIONAL FARM COMMITTEE

---

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA*

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## **BRIEF FOR THE UNITED STATES**

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### **OPINION BELOW**

The opinion of the District Court dismissing the information (R. 39-40) is reported at 109 F. Supp. 641.

### **JURISDICTION**

The order of the District Court was entered on January 30, 1953 (R. 40). Notice of appeal was filed by the United States on February 27, 1953 (R. 41), and probable jurisdiction was noted by this Court on May 4, 1953 (R. 43). The jurisdiction of this Court to review on direct appeal a judgment dismissing an information based on

the unconstitutionality of the statute on which the information is founded is conferred by 18 U. S. C. 3731. See also Rules 37 (a) (2) and 45 (a), F. R. Crim. P.

#### QUESTIONS PRESENTED

Section 305 (a) of the Federal Regulation of Lobbying Act requires that certain records be kept and reports filed by persons receiving contributions or expending money for the purposes designated in Section 307, *i. e.*, to influence, directly or indirectly, the passage or defeat of federal legislation. Section 308 (a) requires any person who engages himself for pay for the purpose of attempting to influence the passage or defeat of legislation to register before doing anything in furtherance of such object. Section 310 (a) makes violation of any of these disclosure requirements a misdemeanor, punishable by fine or imprisonment, and Section 310 (b) prohibits, for a period of three years, any person convicted of such a misdemeanor "from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation." The present information charges violations of Sections 305 and 308 by persons who expended or collected money, or engaged themselves for pay, for the purpose of communicating directly to Congress on federal legislation or of causing others so to communicate.

The questions presented are:

1. Whether the purposes specified in Section 307 are so vague and indefinite as to render Section 305 (a) invalid as applied to this information.
2. Whether Section 308 is unconstitutionally indefinite as applied to this information.
3. Whether Sections 305, 307, and 308 violate the First Amendment, as applied to this information.
4. Assuming that the penalty in Section 310 (b) is unconstitutional, whether the unconstitutionality of that provision serves to invalidate Sections 305 and 308, despite the inclusion in the Act of a separability clause.

#### STATUTE INVOLVED

The full text of the Federal Regulation of Lobbying Act, 60 Stat. 812, 839, 2 U. S. C. 261-270, is set forth in the Appendix, *infra*, pp. 89-95.

#### STATEMENT

##### A. THE INFORMATION

An information in ten counts charging violations of Sections 305 and 308 of the Federal Regulation of Lobbying Act was filed against the defendants in the United States District Court for the District of Columbia on August 31, 1949 (R. 1-23).

1. *Section 308 counts.*—Counts I, VIII, and IX against defendants Moore, McDonald,<sup>1</sup> and Lin-

<sup>1</sup> The death of McDonald was suggested of record in the District Court on January 30, 1953, and the case was dismissed as to him (R. 38).

der, respectively, were laid under Section 308 of the Act (*infra*, pp. 93-94), and charged each defendant with having been a person who engaged himself for pay for the purpose of attempting to influence the passage of legislation relating to the price of farm commodities, without having registered as required by that section of the statute.

a. Moore was charged in count I (R. 1-6) with having engaged himself for pay and other considerations, on behalf of the defendant Harriss, for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by Congress which would cause a rise in the price of agricultural commodities and commodity futures and (b) the defeat of legislation by Congress which would cause a decline of such prices. It was charged that, in pursuance of this engagement, he did the following things (R. 4-6):

(a) Procured the Association, Southern Commissioners of Agriculture, and the Farm Commissioners Council to attempt to influence legislation by Congress relating to (1) parity on farm prices, (2) repeal of the oleomargarine tax, and (3) the President's program for legislation providing for an increase in commodity trading margins.

(b) Procured one McCloskey to urge the passage of legislation by writing statements which were presented to committees of Congress and to members of Congress, urging the passage of the Case Bill and



other bills which would enhance the prices of farm commodities.

(c) Paid the cost of a dinner at the Raleigh Hotel in Washington, D. C., in the name of the North Central States Association of Commissioners, Secretaries and Directors of Agriculture, at which dinner a large number of members of Congress were present, and at which speeches and statements were made concerning legislation by Congress.

(d) Paid the cost of a dinner at the Mayflower Hotel, Washington, D. C., in the name of Farm Commissioners Council, at which dinner a large number of members of Congress were present, and at which speeches and statements were made concerning legislation by Congress relating to farm commodities.

(e) Procured one Clair, for pay, to write up material for the Association, Southern Commissioners of Agriculture, to be presented to the Congress of the United States and its committees relative to legislative matters affecting the price of farm commodities.

(f) Procured one McCloskey to write letters to Grange officers in the Pacific northwest, urging them to write and wire their Congressmen to put peas in the program for foodstuffs to be sent to Europe under the European recovery program.

(g) Procured one Wilken to appear before committees of Congress to urge

legislative action regarding farm commodities which defendants desired; and, specifically, procured him to testify before the House Agriculture Committee to urge the defeat of legislation which would tend to cause lower prices of agricultural commodities, and, also, to testify before the House Ways and Means Committee concerning proposed legislation respecting the reciprocal trade agreements program to urge the defeat of any legislation which would tend to cause lower prices of farm commodities.

b. Similarly, Linder, who was alleged to have been Commissioner of Agriculture for the State of Georgia (R. 1), was charged in count IX (R. 19-21) with having, outside of and apart from his official capacity, engaged himself for pay and for other consideration on behalf of defendants Moore and Harriss, for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agricultural commodities and commodity futures, and (b) the defeat of legislation which would cause a decline of such prices (R. 20). And it was charged that, in pursuance of this engagement, Linder did the following things (R. 20-21):

(a) Testified before Committees of Congress, sent letters and telegrams to members of Congress and officials of the executive

branch of the Government of the United States, issued press releases which were distributed by the Association, the Southern Commissioners of Agriculture, and the Farm Commissioners Council, to members of the Congress of the United States, and made speeches at various functions of these two organizations.

(b) Together with the defendant, James W. McDonald and others, organized the Farm Commissioners Council, for the purpose of utilizing it in influencing and attempting to influence legislation by the Congress relative to farm commodities.

(c) Made a statement before the Senate Committee on Agriculture, using material prepared by one Clair,<sup>2</sup> opposing proposed legislation which would reduce the prices of farm commodities.

(d) Delivered a speech at a dinner alleged to have been sponsored by the Association, Southern Commissioners of Agriculture, staged at the Mayflower Hotel, Washington, D. C., at which about 200 members of Congress were present; and in that speech urged Congress to enact legislation ending the Office of Price Administration controls of prices.<sup>3</sup>

C. Count IX, against the deceased defendant, McDonald, was substantially the same as that

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<sup>2</sup> See allegation (e) of Count I, with respect to defendant Moore (*supra*, p. 5). Cf. R. 5 with R. 21.

<sup>3</sup> See allegation (d) of Count I, with respect to defendant Moore (*supra*, p. 5). Cf. R. 5 with R. 21.

against Linder, except that the specific events and statements were different (R. 17-19).

2. *Section 305 counts.*—The remaining counts—II, III, IV, and V, against the defendant Moore; VI and VII, against the defendant Harriss; and X, against the defendant National Farm Committee—were all laid under Section 305 of the Lobbying Act (*infra*, pp. 91-92). The counts against Moore and Harriss charged them with having made various expenditures for the purpose principally of influencing, directly or indirectly, legislation which would affect the prices of agricultural commodities, and failing to file the reports required by Section 305. Count X, against the National Farm Committee, charged that the Committee, whose principal purpose was to influence, directly or indirectly, legislation relating to agricultural commodity prices, solicited and received specific sums of money for such purposes, and failed to file the required reports.

The detailed allegations with respect to defendants Moore and Harriss show that many of the expenditures were in connection with the acts alleged to have been done by Moore, MacDonald, and Linder, in pursuance of their hire agreements, but other expenditures of similar purpose were also charged. More specifically, count II charges that Moore, for the purpose of influencing and attempting to influence the passage of legislation affecting the prices of agricultural commodities and commodity futures, “paid money to,

financed and sponsored activities of" the Association, The Southern Commissioners of Agriculture, the Farm Commissioners Council, and the North Central States Association of Commissioners, each of which was an unincorporated association which had "as its principal purpose the influencing, directly and indirectly, of legislation by the Congress of the United States affecting agriculture" (R. 7). Count II also charges the procurement, for hire, of the services of the defendants Linder and Moore, who were state agricultural officers, as well as officers in one or more of these associations; and, further, the payments of sums to Wilken and McCloskey as set out earlier in count I (R. 5-7).<sup>4</sup>

Count V, also against Moore, charges the following expenditures (R. 11-13):

(a) On or about November 7, 1947, to one C. C. Hanson, at Washington, D. C., in the sum and amount of \$46.21 for the services of said Hanson in mimeographing 25 copies of a document sent to R. M. Harriss, New York, at the request of the defendant James E. McDonald.

(b) On or about November 20, 1947, to one C. C. Hanson, at Washington, D. C., in the sum and amount of \$63.05 for the services of said Hanson in preparing and sending out a press release on behalf of the Association, Southern Commissioners and Directors of Agriculture, in which a hearing was requested before the Senate Com-

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<sup>4</sup> *Supra*, pp. 5-6.

mittee on Agriculture on the proposed legislation which the President mentioned in his State message on January 17, 1947.

(c) On or about November 20, 1947, to one C. C. Hanson \* \* \* in the sum of \$33.92 for the services of said Hanson, in preparing and sending out a press release, 50 copies of which the said Hanson delivered at the National Press Club.

(d) On or about December 4, 1947, to the Mayflower Hotel, Washington, D. C., the sum and amount of \$1,589.98 which amount was credited to the defendant Moore's account at said hotel against a charge therein entered for 293 dinners on November 24, 1947.<sup>5</sup>

(e) On or about December 31, 1947, to the Mayflower Hotel, Washington, D. C., the sum and amount of \$4,356.01 which amount was credited to the defendant Moore's account at said hotel against the balance of the charge for 293 dinners on November 24, 1947, and other items.<sup>5</sup>

(f) On or about December 15, 1947, and again on or about December 19, 1947, to one C. C. Hanson, the sums and amounts, respectively of \$500 and \$459.36, in payment of an expense account of the said Hanson.

(g) On or about December 18, 1947, to one C. C. Hanson, \* \* \* the sum and amount of \$77.73 for the services of said Hanson in preparing a document to President Wilson of the Association of Southern Commissioners and Directors of Agriculture.

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<sup>5</sup> Compare items (c) and (d) in count I, *supra*, p. 5.

(h) On or about December 18, 1947, to one C. C. Hanson, \* \* \* the sum and amount of \$52.76 for the services of said Hanson in preparing and sending out a Farm Commissioners press release stating that nearly 200 members of Congress had accepted invitations to the dinner sponsored by the Farm Commissioners Council.

(i) On or about December 18, 1947, to one C. C. Hanson, \* \* \* the sum and amount of \$205.61 for the services of said Hanson on press releases in one of which the defendant James E. McDonald stated that he found the President's proposal unsound.

(j) On or about December 18, 1947, to one C. C. Hanson, \* \* \* the sum and amount of \$94.00 for the services of said Hanson in respect to a news item in the Washington Post, 531 copies of which were sent to members of Congress.

(k) On or about December 18, 1947, to one C. C. Hanson, \* \* \* the sum and amount of \$197.34 for the services of said Hanson in preparing 1600 copies of a statement made by the defendant Tom Linder before the Senate Committee on Agriculture.

(l) On or about December 18, 1947, to one C. C. Hanson, \* \* \* the sum and amount of \$100 to compensate one Dr. Clair, for work on a press release.

(m) On or about June 1947, to one C. H. Wilken, Washington, D. C., the sum and amount of \$1,000.

(n) During said quarter the defendant loaned to one C. H. Wilken, the sum and amount of \$5,750.

The other Section 305 counts against Moore and Harriss<sup>6</sup> do not materially differ, except that they relate to different reporting quarters under the Lobbying Act, and except that Harriss is charged with having funnelled some of his expenditures through Moore (see especially R. 16-17).

The Section 305 count against the Farm Committee (count X) is different in that it relies on the language of Section 305 predicated liability on the solicitation, collection, or receipt of funds, rather than on the expenditure of funds as is the case in the Moore and Harriss counts. Thus, count X charges that the National Farm Committee, whose principal purpose was to influence the passage or defeat of legislation affecting the price of agricultural commodities and commodity futures, during the third quarter of 1946 solicited, collected and received contributions for carrying out its purposes, and, specifically, solicited, collected, and received the sum of \$1,000 from defendant Harriss, all without having at any time complied with the reporting requirements of Section 305 of the Act (R. 22-23).

#### B. THE HOLDING OF THE DISTRICT COURT

All of the defendants pleaded not guilty to all counts (R. 42), and moved to dismiss the infor-

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<sup>6</sup> *I. e.*, counts II, III, IV, VI, and VII.



mation, contending, *inter alia*, that the lobbying statute was unconstitutionally vague and indefinite, and an unconstitutional infringement of the rights guaranteed by the First Amendment (R. 23-38).

The District Court granted their motion, adopting for this case the opinion of a three-judge court of the same district in *National Association of Manufacturers v. McGrath*, 103 F. Supp. 510, vacated on grounds of mootness, 344 U. S. 804. In that opinion, the District Court had held that the language of Section 307 (*infra*, pp. 92-93), making the disclosure requirements applicable to any person whose "principal purpose" was "to influence, directly or indirectly, the passage or defeat of any legislation," is so vague and indefinite as to be in violation of the Fifth Amendment; that the same defect vitiates Section 305 (*infra*, pp. 91-92), which incorporates the critical language of Section 307; that the prohibition against lobbying in Section 310 (b) (*infra*, p. 95), imposed as a penalty for violation of the Act, is repugnant to the constitutional guaranty of freedom of speech and of petition; and that this infirmity of the penal provision makes unconstitutional Sections 303 through 307 of the Act.

The decision in the *N. A. M.* case had not passed upon the validity of Section 308 (*infra*, pp. 93-94). As to that Section, the District Court in

the present case held that the invalidity of the 310 (b) penal provision, which also applies to violations of Section 308, invalidates Section 308, in spite of the separability clause in the statute (R. 39-40). Thus, all counts of the information, which was based on Sections 305 and 308, were held bad.

#### **SPECIFICATION OF ERRORS TO BE URGED**

The District Court erred:

1. In dismissing each count of the information.

2. In holding that Section 305 (a) of the Federal Regulation of Lobbying Act is unconstitutionally vague and indefinite because, by incorporating Section 307 of the Act, it applies to any person who receives contributions or expends money for the purpose of influencing "directly or indirectly" the passage or defeat of federal legislation.

3. In holding that the penalty imposed by Section 310 (b) of the Act, prohibiting convicted violators from lobbying for a three-year period, is unconstitutional as in contravention of the First Amendment.

4. In holding that the invalidity of Section 310 (b) in itself serves to invalidate Sections 305 and 308 of the Act, despite the inclusion in the Act of a separability clause.

## SUMMARY OF ARGUMENT

Three counts of this information come under Section 308 of the Federal Regulation of Lobbying Act, which requires registration by any person "who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation" by Congress; the remaining seven counts are laid under Section 305, which demands quarterly reports from persons "receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307," *i. e.*, (a) the "passage or defeat of any legislation by the Congress \* \* \*," or (b) "to influence, directly or indirectly, the passage or defeat of any legislation by the Congress \* \* \*." Somewhat different constitutional problems are raised by Section 308, on the one hand, and Sections 305 and 307, on the other. In addition, the validity of each of these provisions cannot be appraised *in vacuo*, but as it applies in this case to the particular charges made against these defendants. No other case is here.

## I

Sections 305 and 307 of the Federal Regulation of Lobbying Act of 1946 are not unconstitutionally vague and indefinite, as applied to the seven counts of the information laid under those sections.

A. It is clear, from the language and legislative history of the sections, that they were designed to apply, at the least, to those who pay others to state views to Congress, whether formally in committee sessions or informally in speeches, letters, or telegrams, so long as the statements are directed at Congress or Congressmen. It is also clear that the sections were intended to apply to those who spend money in course of inducing others, for nonfinancial considerations, directly to communicate with Congress—in short, to those who sponsor campaigns asking persons to write or contact their Congressmen with respect to the merits of particular legislation. These activities are the core of the traditional understanding of “lobbying” (see *United States v. Rumely*, 345 U. S. 41, 47), and were undoubtedly intended to be covered by a statute called the “Federal Regulation of Lobbying Act.” Both the history of the 1946 Act itself, and that of the 1936 progenitors on which it was modeled, show that, whatever else Congress may have had in mind,<sup>7</sup> it certainly desired to reach those who seek or sponsor direct communication with Congress and Congressmen.

B. Examination of the seven Section 305 counts of this information shows that the great bulk, if not all, of the charges against the defendants are either specifically of this nature, or provable by

<sup>7</sup> For example, attempts to “saturate the thinking of the community” or organized efforts to influence mass public opinion on federal matters. Cf. *United States v. Rumely*, 345 U. S. 41, 47.

facts of this nature. Each count involves charges of failing to report (1) payment to others to communicate directly with Congressmen on pending or proposed legislation, or (2) expenditures or receipt of money in an attempt to induce others to communicate with Congress, usually by letter, on pending or proposed legislation. The gist of these counts is the defendants' undisclosed efforts to have Congressmen contacted on behalf of their views, either directly by the defendants' emissaries or through a stimulated letter campaign. Defendants, with private financial interests at heart, were attempting to exert direct influence on Congressmen in the guise of official representatives of the farmers of Georgia and Texas and genuine proponents of the public weal.

C. Applied to these facts, there is no constitutional vagueness in Sections 305 and 307. The covered activities are simple, specific, and definite. The statutory language, *i. e.*, "to influence, directly or indirectly, the passage or defeat of any legislation," clearly comprehends actions of this type, and, since they are so close to "lobbying" in its most commonly accepted sense, defendants received more than sufficient warning that they were subject to the Regulation of Lobbying Act. The added requirement that defendants be proved to have had a specific purpose to secure a direct contact with Congress also increases their protection. As applied to this case, Sections 305 and 307 are at least as definite as many other laws which this

Court has upheld. E. g., *United States v. Wurzbach*, 280 U. S. 396, 399; *United States v. Petrillo*, 332 U. S. 1; *Jordan v. De George*, 341 U. S. 223; *Boyce Motor Lines v. United States*, 342 U. S. 337.

D. The District Court also apparently thought the statute invalid because coverage was based, in part, on whether solicitations were made, or money received, by persons whose "principal purposes" were the purposes designated in Section 307. But the statute itself shows that this "principal purpose" requirement is not significant in the present case because coverage may clearly be predicated *either* on (i) expenditures for the designated purposes, (ii) the solicitation or receipt of specific contributions principally for the designated purposes, or (iii) any solicitation or receipt by a person or group organized principally for the designated purposes. And all of the counts under Section 305, except count X (against the National Farm Committee), are based on *expenditures*, to which the "principal purpose" qualification does not seem to apply. In any event, there will be no difficulty in determining the purpose of these expenditures, as they are alleged in the information, since they are plainly single-purposed, and not multi-purposed expenditures as to which the "principal purpose" requirement is important. Similarly, in the case of the National Farm Committee (count X), it is alleged that the purpose of the unreported receipt of money was the specific pur-

pose designated by the statute; this is alleged to be the sole purpose.

## II

Section 308 of the Act is not unconstitutionally indefinite as applied to the two remaining counts laid under that section.<sup>8</sup> Like Sections 305 and 307, Section 308 governs at least those who are hired to express views to Congress or to cause others to do so, and Moore and Linder are charged with failing to register although they were hired for these specific purposes.<sup>9</sup>

## III

As applied in this information, Sections 305, 307, 308—requiring disclosure by those who pay others to express views to Congressmen on their behalf, or conduct letter-writing campaigns, or hire themselves to affect legislation by these methods—do not violate the First Amendment.<sup>10</sup> Whatever restraint this requirement may impose on communication is indirect, incomplete, peripheral, and private. There is no legal or governmental sanction on the expression of ideas; if sanction there be, it is fear that the reporter or registrant will be subject to private pressures.

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<sup>8</sup> The count against McDonald has abated because of his death (R. 40).

<sup>9</sup> The District Court did not hold Section 308 too vague, or that the Act violated the First Amendment, although defendants made those contentions.

<sup>10</sup> See footnote 9, *supra*.

This may, indeed, be an actual restraint, but it is not an abridgment of First Amendment rights. Self-censorship or self-restraint in expression of ideas—stemming from but going beyond a legal requirement (*e. g.*, the slander and libel laws)—is a common result of timidity, caution, care, or the desire to avoid controversy or litigation, but this type of voluntary, tangential restraint has never been thought within the First Amendment, even where it flows from fear of a statutory penalty or other legal sanction. *A fortiori*, there is no abridgment here where the feared sanction is concededly not legal at all, but social or economic pressure consequent upon disclosure of true facts. At least where disclosure serves a legitimate purpose, it cannot invade First Amendment rights.

On the other hand, the interest in favor of which this peripheral “restraint” is imposed is fundamental to the very processes of democratic society. For forty years, Congress has been concerned with the relationship between (a) fact-finding and opinion-finding, as bearing on the legislative process, and (b) the individuals, groups, and organizations which seek to influence Congressional action. Congress’ own studies, and those of other responsible students, have indicated that there is at least reasonable basis for the belief that Congress’ functioning has been impaired by lack of knowledge of the character, sponsorship, and activities of those who seek to influence it. Disclosure, it is thought, will aid the reaching



of wiser judgments on federal legislation by helping Congress and the electorate to evaluate the facts and arguments pressed on Congress and to appraise the true scope of the blocs of opinion said to support or oppose a particular bill or project. The aim of the Lobbying Act, which has not been to silence or prohibit ideas but to understand their sponsorship, is consonant with, rather than contrary to, the First Amendment.

#### IV

The information should not have been dismissed on the basis of the alleged invalidity of the penal provision of Section 310 (b). Even if Section 310 (b) were invalid, the remainder of the Act is plainly separable. Section 310 (a) imposes a penalty of fine and/or imprisonment, which is clearly separable from the penal provision of Section 310 (b), both as a matter of obvious Congressional intention and because the Act has an explicit separability clause (60 Stat. 812, 814, *infra*, p. 95). There is no reason to hinge valid substantive provisions on the "additional" and minor penalty in Section 310 (b). Moreover, the penalty is valid as properly construed.

#### V

The validity of the Lobbying Act as applied to other situations is not before the Court and should not be determined. This Court does not reach out

to decide hypothetical constitutional controversies unsupported by a proper record. E. g., *United Public Workers of America v. Mitchell*, 330 U. S. 75; *Rescue Army v. Municipal Court*, 331 U. S. 549, 568 ff. Nor do the defendants have standing to raise the alleged rights of others. E. g., *United States v. Wurzbach*, 280 U. S. 396, 399. And where the statute applies to the case before the Court, borderline situations of greater difficulty are put aside until they arise. Since the Lobbying Act is severable as to both provisions and circumstances, there is no occasion to breach these accepted principles of constitutional adjudication, which have been expressly held to apply under the Criminal Appeals Act. *United States v. Petrillo*, 332 U. S. 1, 5, 10-12; *United States v. Spector*, 343 U. S. 169, 172.

#### ARGUMENT

Three of the ten counts of the information (against Moore, Linder, and the deceased defendant, McDonald) are laid under Section 308 of the Federal Regulation of Lobbying Act, and the other seven (against Moore, Harriss, and the National Farm Committee) come under Section 305. The former requires "any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation" by Congress to register with the Congress "before doing anything in furtherance of such object." Section 305 de-

mands a quarterly written report from "every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307."<sup>11</sup> The District Court invalidated Section 305 on two grounds, *first*, that Section 307, which was incorporated, is too vague and indefinite, and, *second*, that the penalty provision of Section 310 (b), prohibiting convicted violators from lobbying for a three-year period, is unconstitutional and inseparable from the rest of the Act. Section 308 was invalidated solely on the latter basis. The constitutional problems posed in this Court by the two sections are, therefore, not fully coextensive—aside from the fact that the provisions differ in wording and reach.

The constitutional issues before the Court also come here embedded in the context of this particular information. These charges concern defendants who collected or spent money, or engaged

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<sup>11</sup> Section 307 provides that the Lobbying Act shall apply, with stated exceptions, to any person "who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."

themselves for pay, for the specific purpose of making representations, or causing others to make representations, to members of Congress—in committee assembled or at dinners in Washington, through publications designed for direct Congressional perusal, or through letters to Congressmen. The pith of the information is that the defendants sought, for their undisclosed private gain, to influence Congress to maintain high prices for farm products by deliberately purchasing representations which would appear to Congress to be made on behalf of the general public or of the country's farmers. Purporting to speak to Congress on behalf of the farmers of Georgia and Texas, the Commissioners of Agriculture of those States (Linder and McDonald) actually represented, for pay, the defendants' personal financial interest; the same is charged of the representations made or procured on defendants' behalf by various agricultural organizations and other persons.

The vagueness which the District Court found in the statute relates, not to its application to these averments of paid direct representations to Congress on behalf of undisclosed interests, but to its possible impact on activities more remote from such direct (but camouflaged) communication. Cf. *National Association of Manufacturers v. McGrath*, 103 F. Supp. 510 (D. D. C.), vacated on the ground of mootness, 344 U. S. 804; *United States v. Rumely*, 345 U. S. 41. But whether or not the Lobbying Act

would be valid as applied to all organized efforts to influence mass public opinion on federal matters, it was error for the court below to dismiss this information in view of the clearly operable area for the statute in the circumstances presented here—the area of direct communication with Congress. The thrust of this brief is, therefore, directed to the validity of the Act as it relates to the specific situation alleged in this information. It is in the light of this situation that we discuss Sections 305 and 307, then Section 308, and finally Section 310 (b).

**I. SECTIONS 305 AND 307 OF THE FEDERAL REGULATION OF LOBBYING ACT ARE NOT UNCONSTITUTIONALLY INDEFINITE AS APPLIED TO THE COUNTS OF THE INFORMATION LAID UNDER THOSE PROVISIONS**

**A. SECTIONS 305 AND 307 PLAINLY APPLY TO THOSE WHO EXPEND MONEY EITHER (A) TO PAY OTHERS TO COMMUNICATE TO CONGRESS OR (B) IN THE COURSE OF DIRECTLY INDUCING OTHERS TO COMMUNICATE TO CONGRESS**

Congress enacted the Federal Regulation of Lobbying Act because it had found, over a long period of time, that its ability to determine the public will, with respect to particular legislative issues, was distorted by the fact that what appeared to be legitimate expressions of the views of individuals or groups, with various apparent interests, turned out on closer inspection to be views that those expressing them were hired, pressured, or seduced to take. Congress did not believe that it could effectively perform its legis-

lative function without being able to determine, with as little distortion as possible, what were the true components of the public will and what was the source of the facts and information brought to its attention.

Two basic techniques were adopted to accomplish these purposes. One was to require those who were hired to communicate to Congress to state by what authority and at whose financial instance they acted. That is the gist of Section 308 of the Act, which we discuss below (*infra*, pp. 58 ff.). But because the history of the problem showed that identification of the paid lobbyist solved only part of the difficulty, Congress also devised a mechanism for disclosure by the direct lobbyist's financial supporters of their efforts to affect legislative operations. Sections 305 and 307 fulfill that function.

In this Point, we show that those sections are clearly designed, at the very least, to require disclosure by those who collect or spend money for the specific purpose of causing other people to communicate directly with members of Congress. That is the express charge levied against Moore, Harriss, and the Farm Committee, under Sections 305 and 307.

### 1. *The language of the Act*

Section 305 of the Act provides that:

Every person receiving any contributions or expending any money for the pur-

poses designated in subparagraph (a) or (b) of section 307 shall file \* \* \* a statement \* \* \*.

Section 307 provides that:

The provisions of this title shall apply to any person \* \* \* who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

It is clear that on its face this language comprehends, and must have been intended to comprehend, those who pay others to state their views to Congress or Congressmen with respect to particular legislative matters; it also covers those who spend money in the course of inducing others to contact Congressmen with respect to legislative matters.

Obviously, such conduct may aid in the accomplishment of the passage or defeat of legislation by the Congress; or, if more remote from a specific vote on legislation, such conduct may influ-

ence its passage or defeat. The Congressional testimony, for example, of the defendant Linder, an agricultural official of the State of Georgia, that certain legislation would adversely affect agricultural income in Georgia, might well "influence" a legislator in the sense that it might cause him to shift his view or his vote for or against the legislation. The same is true of speeches or talks to Congressmen at dinners or in their offices, as well as of written communications mailed or delivered to them. Nothing would seem to be clearer than that a statute called the "Federal Regulation of Lobbying Act" (*infra*, p. 89) would cover at least those activities which this Court, at its last term, called the "commonly accepted sense" of "lobbying," *i. e.*, representations made directly to the Congress, its members, or its committees. *United States v. Rumely*, 345 U. S. 41, 47. Subparagraphs (a) and (b) of Section 307 must have that scope as a minimum, and Section 305 must deal with those who expend or contribute money for such activities.

Not all efforts will, however, be quite so immediate. An avalanche of letters directed at a Congressman in favor of or against a particular piece of legislation may cause him to draw some conclusion about community feeling with respect to a legislative issue, and this conclusion will affect (*i. e.*, "influence") his vote, or his speech on the floor, or conferences with colleagues, and thereby the passage or defeat of legislation. In



such a case, the effort of the opinion-influencers to mold Congressional opinion through the medium of requests to people to write letters is one step removed from direct contact, but it is at least an "indirect" attempt to influence legislation, which Section 307 (b) also covers. The making of representations to Congress, which is the traditional core of lobbying, is both sought and intended by those who urge the sending of letters, and the letters constitute the representations they desire. The purpose of such people is clearly to "influence" "the passage or defeat" of legislation through direct communication with the legislators.

## 2. *Legislative history*

a. *The 1946 Act.*—Congressional explanation of the Lobbying Act at the time of its passage in 1946 was fairly sketchy. Nonetheless, that history shows that conduct like that charged against the defendants, conduct which is calculated to cause a direct and almost immediate impact on Congress, was within the purpose of the Act.

The Lobbying Act was enacted as part of the much broader Legislative Reorganization Act of 1946. That broader Act was reported to Congress by the Joint Committee on the Organization of Congress which had been authorized by concurrent resolution to "make a full and complete study of the organization and operation of the Congress of the United States and \* \* \* recommend improve-

ments in such organization and operation with a view toward strengthening the Congress, simplifying its operations, improving its relationships with other branches of the United States Government, and enabling it better to meet its responsibilities under the Constitution." H. Con. Res. 18, 79th Cong., 1st Sess., 59 Stat. 839.

After hearings, the Joint Committee issued identical House and Senate Reports (H. Rep. 1675, 79th Cong., 2d Sess.; S. Rep. 1011, 79th Cong., 2d Sess.) in which it was stated (at p. 26 of both reports) that:

Your committee heard many complaints during its hearings of the attempts of organized pressure groups to influence the decisions of Congress on legislation pending before the two Houses or their committees.

We fully recognize the right of any citizen to petition the Government for the redress of grievances or freely to express opinions to individual Members or to committees on legislation and on current political issues. However, mass means of communication and the art of public relations have so increased the pressures upon Congress as to distort and confuse the normal expressions of public opinion.

A pure and representative expression of public sentiment is welcome and helpful in considering legislation, but professionally inspired efforts to put pressure upon Congress cannot be conducive to well considered legislation.

This language shows that Congress intended to deal, at the least, with those efforts which were designed to result, directly and immediately, in people talking or writing to Congress. The right to express opinions to Congress and its committees is unquestioned by the Joint Committee, but it speaks of the problem raised by "mass means of communications and the art of public relations." One who pays another to talk to Congress, or who specifically requests that others talk to Congress, is plainly within this explanation of the problem with which the Committee was to deal.

Both the Senate report and the House report (issued only in preliminary form) on the Reorganization Act (S. Rep. No. 1400, 79th Cong., 2d Sess., p. 27; Committee Print of H. Rep. on Legislative Reorganization Act of 1946, 79th Cong., 2d Sess., pp. 32-33) declare that the Regulation of Lobbying title applies "chiefly to three distinct classes of so-called lobbyists":

First. Those who do not visit the Capitol but initiate propaganda from all over the country, in the form of letters and telegrams, many of which have been based entirely upon misinformation as to facts. This class of persons and organizations will be required under the title, not to cease or curtail their activities in any respect, but merely to disclose the sources of their collections and the methods in which they are disbursed.

Second. The second class of lobbyists are those who are employed to come to the Capitol under the false impression that they exert some powerful influence over Members of Congress. These individuals spend their time in Washington presumably exerting some mysterious influence with respect to the legislation in which their employers are interested, but carefully conceal from Members of Congress whom they happen to contact the purpose of their presence. The title in no wise prohibits or curtails their activities. It merely requires that they shall register and disclose the sources and purposes of their employment and the amount of their compensation.

Third. There is a third class of entirely honest and respectable representatives of business, professional, and philanthropic organizations who come to Washington openly and frankly to express their views for or against legislation, many of whom serve a useful and perfectly legitimate purpose in expressing the views and interpretations of their employers with respect to legislation which concerns them. They will likewise be required to register and state their compensation and the sources of their employment.

The generally unsatisfactory debate on this measure in the Senate and House shows the same understanding. Senator La Follette, who was Chairman of the Joint Committee on the Organization of Congress, stated at the outset of the

debate in the Senate on this phase of the reorganization bill [92 Cong. Rec. 6367-6368]:

\* \* \* \* \*

Mr. President, in the last analysis the Congress is the center of political gravity under the Constitution, because it reflects and expresses the popular will in the making of national policy.

In recent years in particular, and to a growing extent, the true attitude of public opinion has too often been distorted and obscured by pressures of special-interest groups. Every Senator and Representative has been on the receiving end of this type of public pressure. *Organized campaigns of one kind and another are daily reflected in the telegrams, letters, and other communications which are received in the office of every Senator and every Representative. Therefore, your committee has come to the conclusion that the time has arrived when the Congress must take action, not in any way, shape, or manner to contravene or to reduce the right of petition which is guaranteed to the citizens of this Republic by the Constitution, but in order that there may be a public record of the activity of those pressure groups. We have recommended, therefore, and there is contained in this measure, a provision for the registration of persons using their influence upon the Congress.*

\* \* \* \* \*

\* \* \* the title applies chiefly to three distinct classes of so-called lobbyists:

First. Those who do not visit the Capitol, but initiate propaganda from all over the country in the form of letters and telegrams, many of which have been based entirely upon misapprehensions or misinformation as to the facts.

I am sure every Senator has had the same experience I have had on occasion of writing to persons who have responded to this type of suggestion, sending them a copy of the proposed legislation, and asking them for their comments. After they have read the measure, it is discovered that the telegram or letter was written perfectly innocently by the citizen or the organization without proper information as to the true legislative intent of the measure then pending.

At this point, Senator White interrupted Senator La Follette to say [92 Cong. Rec. 6368]:

Of course, it is everlastingly true that, unless Members of the Senate and the House of Representatives are able to know who is appealing to them, they never are able properly to evaluate what is said to them or what is written to them. *It is absolutely essential, if we are to give the proper weight to whatever comes to our ears or our desks, that we shall know who are the people and what is the interest of the people who are making their representations to us.*

And later still, Senator McClellan, after quoting the language of the Report stating that the Act applied to those lobbyists "who do not visit the Capitol but initiate propaganda from all over the country in the form of letters and telegrams \* \* \*," stated [92 Cong. Rec. 6552]:

The provision may have a wholesome purpose. I do not know whether it can be restricted to that one purpose. One of the purposes is to try to reach those who spend large sums of money for broadcasting, buying radio time, or sending out literature which usually winds up with the request, "*Be sure to write your Congressman or Senator to oppose H. R. —, or to support a certain Senate bill.*" There is a great deal of such activity. I doubt if there is any Senator who cannot sense the propaganda and pressure type of mail, even before he opens the envelope. It is not difficult. I know the people of my State well enough so that when I receive a letter I can usually tell from the opening sentences whether the letter was inspired by the head of some organization, or by some of the propaganda which is continually being sent out over the channels of the air by commentators and others who spend a great deal of their time criticizing the Congress and trying to bring it into disrepute. \* \* \*

\* \* \* *I believe there should be some regulation of the professional propagandists who are always trying to agitate the people and stir them up to write their*

*Senators and Representatives on many subjects.* These professional propagandists are motivated purely from a selfish or personal standpoint, or because they are paid for their activity. \* \* \* [Emphasis added throughout.]

There was, in short, ample indication to those who voted in support of the Lobbying Act in 1946 that the words "to influence the passage or defeat of legislation" were meant, at the least, to apply to the situation where expenditures were made for programs explicitly designed to induce others to contact Congress, and, *a fortiori*, where people were paid or hired to state the views of others to members of Congress. There is no doubt that the Act was intended to reach at least that kind of lobbying activity.

b. *The 1936 proposals.*—The Lobbying Act passed in 1946 had as progenitors some proposed pieces of legislation introduced about ten years earlier in the 74th Congress. See Futor, *An Analysis of the Federal Lobbying Act* (1949), 10 Fed. Bar. J. 366, 375 ff. Like the 1946 law, the history of the earlier proposals shows that, although the bills may have had a broader scope, the drafters certainly intended to cover those who, as defendants here, either paid people to communicate to Congress, or spent money in an express attempt to induce others to talk or write to Congress.



The first draft of the 1936 legislation,<sup>12</sup> which was introduced in the House as H. R. 11223, was deliberately based on the Federal Corrupt Practices Act, 43 Stat. 1070, which required the disclosure of contributions and expenditures of "any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential or vice presidential electors \* \* \*" [emphasis supplied]. (The constitutionality of this Act had been sustained in *Burroughs and Cannon v. United States*, 290 U. S. 534.)

The proposed lobbying legislation stated as the controlling purposes, in language not materially different from that now used:

(a) The enactment or defeat of any legislation or appropriation by the Congress of the United States or the repeal or nonrepeal of any existing laws of the United States, or adoption or defeat of any amendment to the Constitution of the United States.

(b) To influence directly or indirectly the passage or defeat of any legislation or appropriation by the Congress of the United States.

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<sup>12</sup> S. 2512, passed by the Senate in May 1935 (79 Cong. Rec. 8304-8306), dealt with those who engaged themselves for pay or other consideration to attempt to influence legislation, and was thus a parent of Section 308 of the 1946 Act. See *infra*, pp. 58 ff.

This earlier bill, unlike the 1946 legislation, was not the product of a general attempt to overhaul the functioning of Congress. Rather, it resulted primarily from an investigation into activities financed by public utilities in opposition to the Public Utility Holding Company Act of 1935. Consequently, it is fair and proper to read into this and cognate bills a basic purpose to cure the glaring aspects of the lobby campaign that provoked the proposals.<sup>13</sup> While this reveals considerable evidence of a broad purpose to regulate the expenditures of enormous amounts of money to saturate the public with a particular point of view, it reveals also a narrower and specific purpose to regulate those whose efforts were intended to get people to write or talk to Congress. Thus, in the House Committee Report, reporting H. R. 11223 and recommending its enactment, it is stated (H. Rep. No. 2081, 74th Cong., 2d Sess., pp. 2-4) :

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<sup>13</sup> In 1935-1936, there was a major investigation of alleged efforts by public utility holding companies to influence legislation regulating holding companies. The Black Committee was designated by the Senate to investigate (S. Res. 165 and 184, 74th Cong., 1st Sess.), and it made an intensive study, including the making of representations to Congress. The study showed, for example, that out of a total of 31,580 telegrams sent to Washington from twenty different towns, all but 13 were filed and paid for by utility company agents, almost invariably without consent of the person whose name was used. Hearings before the Special Senate Committee to Investigate Lobbying Activities, 74th Cong., 1st and 2d Sessions, and 75th Cong., 3d Sess., pp. 1014-1015.

The companies acting in concert sought to bring home to utilities investors and employees, and to the public generally, the purport and consequences of this legislation as the companies saw them. The means used were telegrams, articles, letters, circulars, advertisements, and every form of communication practicable. *Coupled with this county-wide dissemination of publicity were appeals that whoever agrees with the position of the companies communicate his attitude to his Representative in Congress.* Field agents everywhere urged such actions. In many instances facilities were afforded and expenses paid for sending such communications.

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Ordinarily, the right of executives of corporations to keep their investors informed when in their judgment the value of their securities is imperiled, as well as the right of the investors to protest to their Representatives in Congress is without question.

But this was no ordinary instance. The committee is of the opinion that *to unloose upon Congress* a highly charged avalanche or propaganda is unwholesome and inimical to the public interest. It seeks to impress upon the membership the sense of a popular uprising, when in fact it is an artificial product. \* \* \*

\* \* \* \* \*

This Committee believes that every American citizen and interest that may be

affected by proposed legislation has the highest right and privilege to be heard—a right that should be neither denied nor abridged. But on the other hand, the membership of Congress, to whom appeal is *made and upon whom it is sought to exert pressure* and the public likewise appealed to, and *who is asked to exert that pressure*, have a right to know by whom and in whose interest such appeals are made, by whom these movements are financed, and the manner in which money is expended. \* \* \* Likewise, when legislators are approached upon any question they are entitled to know by whom, for whom, and under what exact circumstances. \* \* \* [Emphasis added.]

H. R. 11223 was carried over into H. R. 11663, which was twice debated by the House, first in its original “narrow” form and later as broadened by the Senate and the Conference Committee.<sup>14</sup> On both occasions, there was an authoritative declaration that the bill applied to those who caused letters and similar communications to be sent to Congress. Representative Smith, the

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<sup>14</sup> H. R. 11663 was first passed by the House in March 1936. 80 Cong. Rec. 4541. Without significant debate, the Senate substituted its own bill by way of amendment. 80 Cong. Rec. 4969–4970. The Conference Committee proposed the so-called “broad” version of H. R. 11663. This was rejected by the House in June 1936. 80 Cong. Rec. 9430–9434, 9743–9753.

sponsor, said during the first debate (80 Cong. Rec. 4525) :

One class [affected by the bill] will be those people who sit at home and raise great funds to flood Congress with false propaganda; people who cause telegrams and letters to be sent to you and to me to try to make it appear to us that there is a great surge of public sentiment for or against a certain measure proposed here.

Similarly, Mr. Smith stated on the second occasion (80 Cong. Rec. 9750-9751) :

This bill \* \* \* originated with the utility investigation. It was aimed at the utility lobby which was investigated by the Rules Committee, of which I was a member.

\* \* \* \* \*

The bill was framed principally to curb the growing evil of organized attempts to influence legislation by the stimulation of false propaganda designed thru avalanches of inspired letters and telegrams to impress upon Members of the Federal Congress that a great surge of public sentiment exists for or against the passage of proposed legislation.

These indications of Congressional purpose in 1936 are especially significant because the terms of the 1946 Act were substantially taken from the earlier bills. See Futor, *op. cit. supra*, pp. 374-380; H. Rep. No. 3239, 81st Cong., 2d Sess.,

pp. 17-20 (the Buchanan Committee's Report and Recommendations on the Federal Lobbying Act).<sup>15</sup>

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**B. THE SECTION 305 COUNTS CHARGE THAT THE DEFENDANTS PAID OTHERS TO MAKE REPRESENTATIONS ON THEIR BEHALF TO CONGRESS OR ATTEMPTED TO INDUCE OTHERS TO COMMUNICATE WITH CONGRESS**

We have set out in the Statement the allegations of the information in some detail (*supra*, pp. 4-12) because we think they show that the great bulk, if not all, of the charges against the defendants relate to two general classes of acts: (1) paying others to talk directly to Congress or Congressmen, and (2) attempting to induce others, by non-financial inducements, to communicate with Congress, usually by letter. In each instance, the representation was made with respect to the merits or demerits of pending legislation affecting the prices of agricultural commodities, but without disclosure of the defendants' private financial interest. Although the form of the statute requires the Section 305 counts to be framed in terms of specific expenditures, or receipts, in specific quarters of the year, it is nonetheless true that the basic nature of the defendants' efforts to affect legislation, as

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<sup>15</sup> Representative Smith's statement, in 1936, of the three classes of persons to be covered by the then lobbying bill (80 Cong. Rec. 4525) is virtually identical with that given by both the Senate and the House reports on the 1946 Act. See *supra*, pp. 31-32.

charged in this information, clearly falls into the pattern we have stated.<sup>16</sup>

1. Thus, counts II, III, IV, and V, the Section 305 counts against defendant Moore, charge expenditures for the principal purpose of aiding "in influencing, \* \* \* the passage of legislation \* \* \*" by (1) sponsoring activities of three farm associations, The Southern Commissioners of Agriculture, the Farm Commissioners Council, and the North Central States Association of Commissioners, Secretaries and Directors of Agriculture, each of which in turn "had as its principal purpose the influencing, directly and indirectly, of legislation by the Congress of the United States affecting agriculture"; (2) by procuring the services of the defendants, James E. McDonald and Tom Linder, who had been identified as the Com-

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<sup>16</sup> The Act does not in terms state the amounts necessary to be contributed or spent to result in coverage. But it must certainly be true that it was not intended to cover minimal amounts, since such contributions or expenditures obviously would not have significance in terms of the purposes of the Act. The Clerk of the House of Representatives, in preparing his Outline of Instructions for Filing Reports, Federal Regulation of Lobbying Act (1951), placed the minimum amount which would require compliance with the Act at \$100 per year. This figure was used as a result of a Report by the House Select Committee on Lobbying Activities (the Buchanan Committee), H. Rep. No. 3239, 81st Cong., 2d Sess., pp. 15-16. The new forms for reporting and registration, adopted by the Clerk of the House and the Secretary of the Senate in 1950, have simplified compliance with the Lobbying Act. See H. Rep. No. 3239, 81st Cong., 2d Sess., p. 5.

missioners of Agriculture of Texas and Georgia, respectively; and (3) by procuring the services of one Carl H. Wilken, who was apparently an agricultural expert and who testified for defendants before Congressional committees (R. 5-6).

In addition to these allegations, common to the four Section 305 counts against defendant Moore, there are allegations respecting particular expenditures in particular quarters which Moore failed to report. These particular expenditures are the immediate basis for the charge of failing to report, as required by Section 305.<sup>17</sup> In count II, these items related to payments, in the amount of \$2,250, to defendant Linder, and, in the amount of \$250, to one McCloskey, who appears from the information to have written letters to Grange officers at Moore's instance, urging them to write their Congressmen to put peas in the program for foodstuffs to be sent to Europe under the European Recovery Program (R. 5), and also to have written statements, also at Moore's instance, for presentation to Congress (R. 5) (although it does not appear on the face of the information that this payment was specifically related to these letters and statements).

In count III, the specific expenditure was a payment to the Mayflower Hotel for a dinner, in

<sup>17</sup> Through a typographical error, paragraph 11 of count II (R. 8) refers back to paragraph 9 instead of paragraph 10.



the amount of \$1,100 (R. 9). From allegations elsewhere in the information (R. 5), it may reasonably be inferred that this was a dinner which was ostensibly sponsored by one of the defendants' farm associations, and at which Congressmen were spoken to about farm legislation.<sup>18</sup>

In count IV, the specific expenditures were deposits of three separate sums of \$3,000, \$4,500, and \$3,600 in brokerage accounts of the late defendant McDonald, of one Harold B. McDonald, of Texas, and of Ruth Aspinwall (not otherwise identified), presumably as part of the program of securing the good offices of McDonald, a Texas state official, and those of the person for whom Aspinwall acted, in having representations made to Congress.

In count V, the specific expenditures were many, but they included (1) a printers bill for preparing and sending out a press release on behalf of the Association, Southern Commissioners and Directors of Agriculture in which a hearing was requested before the Senate Committee on Agriculture on the specific proposed legislation; (2) a payment to one Hanson in respect to a news

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<sup>18</sup> A comparison of paragraphs 11 (c), (d), and (e) on R. 5 with paragraph 2 (a) on R. 9 and paragraphs 2 (d) and (e) on R. 12 indicates that the hotel referred to in count III should be the Raleigh Hotel, not the Mayflower. This and other errors can be corrected on remand. See *United States v. Petrillo*, 332 U. S. 1, 11.

item in the Washington Post, 531 copies of which were sent to members of Congress; (3) payments and a loan to Wilken, who is elsewhere identified as having testified before Congressional committees at Moore's instance (R. 5-6), in the total sum of \$6,750; and (4) payments to the Mayflower Hotel, in the sum of \$5,945.99, for dinners at which Congressmen were spoken to on agricultural legislation (see R. 5).

2. Similarly, in counts VI and VII, the Section 305 counts against defendant Harriss, it is first generally alleged that Harriss expended money "principally to aid in influencing \* \* \* legislation \* \* \*" affecting the prices of agricultural commodities and commodity futures; and that he did so by procuring the services of defendants Moore, McDonald, and Linder (whose activities are described elsewhere in the information). And in count VI it is charged that he made specific expenditures to various persons, including Linder, Hanson (see *supra*, pp. 45-46), one Lois Moore, one Matt Dahl, the National Farm Committee, and to Richard Tullis, identified as an officer of the National Farm Committee, in each case in amounts of \$250 or larger. In count VII, payments to defendant Moore, in the total amount of \$50,000, and to defendant McDonald, in the amount of \$6,000, are alleged. From other allegations in the information, it can be assumed that these expenditures related to the procuring

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of direct representations to Congress on agricultural matters.<sup>19</sup>

3. Finally, in count X, the remaining Section 305 count, it is alleged that defendant National Farm Committee, whose principal purpose was to influence the passage of legislation which would cause a rise in the price of agricultural commodities and commodity futures and the defeat of legislation which would cause a fall in such prices, had solicited, collected and received from the defendant Harriss the sum of \$1,000 for carrying out its purposes.

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Realistically read in the context of the whole information, it is clear that the substance of the 305 charges against defendants Moore and Harriss is that they paid individuals and groups to communicate with Congress, in various ways, on their behalf, and that this was deliberately done without disclosure of the true nature of the pecuniary backing or the identity of the sponsors or their private financial interests.<sup>20</sup> It is plain, also,

<sup>19</sup> No bill of particulars was sought by the defendants. See *United States v. Petrillo*, 332 U. S. 1, 10-11.

<sup>20</sup> Paragraph 6 of count I, which is expressly incorporated into all the other counts, declares that the "defendants well knew and intended [that] the members of the Congress would not know that such activities, plans, schemes and designs of the defendants and such use and employment of these several organizations were in fact based upon and in pursuance of the defendants' purpose to advance their personal financial interests; and, as to the defendants Tom

that the means of communication took the form of releases directed at Congress, testimony before Congress and its committees, the more subtle blandishment of after dinner speeches to Congressmen, or, finally, the encouragement of letters to Congress. With respect to the National Farm Committee, the substance of the charge is that the Committee received money, for the purpose of taking positions on farm legislation which would "directly" influence the passage of favorable farm legislation, from Harriss, the motivation of whose interest in that type of legislation did not coincide with that of a public nonprofit agricultural group such as the Committee appeared to be.

These charges are all provable, within the meaning of the statute, by showing facts which would go no farther than we have shown is appropriate in subsection A of this Point of the Argument (*supra*, pp. 25-42). The lobbying activities with which the information deals all involve direct representations to Congress or the express inducement of such representations.<sup>21</sup>

Linder and James E. McDonald, that the members of the Congress would be unaware that they were acting outside of and apart from their capacities as state officials instead of making unbiased efforts to further the interests of persons engaged in agricultural pursuits and of other members of the public" (R. 3).

<sup>21</sup> There is no prohibition in the Criminal Appeals Act on this Court's construing an indictment or information in connection with a determination of constitutional or statutory issues, so long as the Court does not go counter to a construc-

C. THERE IS NO UNCONSTITUTIONAL VAGUENESS IN SECTIONS 305 AND 307 AS APPLIED TO DIRECT COMMUNICATION WITH, OR INTENTIONAL STIMULATION OF DIRECT COMMUNICATION WITH, CONGRESS

As we have shown (*supra*, pp. 25-42), the language and legislative history of Sections 305 and 307 make it plain that they were intended, at the least, to apply and they do apply to persons who pay others to state views to Congress, whether formally in committee sessions, or informally in speeches, letters, etc., so long as the statements are directed at Congress or Congressmen. It is also clear that the sections apply to those who spend money to induce others directly to communicate with Congress, such as the sponsors of campaigns asking members of the public to write or contact their Congressmen with respect to particular legislation. We have also shown (*supra*, pp. 42-48) that the activities charged in this information fall within these bounds of direct communication.

Thus applied, the Act presents no serious question of indefiniteness, in appraising which "the particular context is all important." *American*

tion of the indictment or information made by the District Court. See *United States v. Congress of Industrial Organizations*, 335 U. S. 106, 110-112; *United States v. Petrillo*, 332 U. S. 1. If the Court should feel, however, that any part of the information is not sufficiently definite for the purposes of constitutional adjudication, *United States v. Petrillo*, 332 U. S. 1, 9-13, shows that the case can be remanded without determination of the issues relating to that portion of the information.

*Communications Assn. v. Douds*, 339 U. S. 382, 412.<sup>22</sup> The necessity that there be direct contact with Congress, whether paid for or expressly stimulated, imports a sufficient degree of specificity. Certainly, no one who paid money to have another present views to Congress or who spent money to stimulate persons to write to their Congressmen would be in any doubt that his conduct came within the terms of a statute which covers a purpose "to influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States." Activities of that type—as *United States v. Rumely*, 345 U. S. 41, 47, now underlines—are the traditional heart of lobbying and legislature-influencing, and would plainly be governed by a "Regulation of Lobbying Act." The coverage is indisputable in this instance, but, even if it were more doubtful, it would not be "unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." *Boyce Motor Lines v. United States*, 342 U. S. 337, 340.

For this aspect of the case, it is perhaps not necessary to go beyond the decision in *United States v. Wurzbach*, 280 U. S. 396, where the Court sustained, on direct appeal, an act which

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<sup>22</sup> As we point out in detail *infra*, pp. 81 ff, the presence of difficult, borderline or peripheral cases does not invalidate a statutory provision where there is a hard core of circumstances to which the statute unquestionably applies.

made it unlawful for any Congressman, or candidate for Congress, or officer or employee of the United States "to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution *for any political purpose whatever*, from any such officer, employee, or person." [Emphasis supplied.] The indictment charged a Congressman with having received money from federal officers and employees for the political purpose of promoting his nomination as Republican candidate for representative at certain Republican primaries. The Court thought that the "language is perfectly intelligible and clearly embraces the acts charged." 280 U. S. at 398. It was argued that the statute was invalid, among other reasons, because there was no definite meaning to the crucial words "political purposes." However, the Court, in an opinion by Mr. Justice Holmes, said, at p. 399:

\* \* \* But we imagine that no one not in search of trouble would feel any. Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash v. United States*, 229 U. S. 373.

Cf. *Burroughs and Cannon v. United States*, 290 U. S. 534 (Federal Corrupt Practices Act).

As sought to be applied to the present defendants, the Regulation of Lobbying Act is also at least as definite as several other statutes upheld by this Court. In *Boyce Motor Lines v. United States*, 342 U. S. 337, the defendant was required to determine whether there was a truck route available which made it possible to avoid "congested thoroughfares, places where crowds are assembled, street car tracks, tunnels, viaducts, and dangerous crossings"; if so, it then became necessary to determine whether the alternative route was "practicable" and "feasible." Other statutes have required those covered to decide whether sound trucks are "loud and raucous" (*Kovacs v. Cooper*, 336 U. S. 77, 79); whether competitive activities are "fair and open" (*Old Dearborn Co. v. Seagram Corp.*, 299 U. S. 183); whether sheep are interfering with the "usual and customary" use of a range (*Omaechevarria v. Idaho*, 246 U. S. 343, 348); whether activities are "reasonably calculated" or "tend" to fix prices (*Waters-Pierce Oil Co. v. Texas (No. 1)*, 212 U. S. 86); whether a fire is "near" the public domain (*United States v. Alford*, 274 U. S. 264); whether income tax deductions are for "a reasonable allowance for salaries or other compensation for personal services actually rendered" (*United States v. Ragen*, 314 U. S. 513); whether one is coercing an employer to employ persons in excess of the number "needed" (*United States v. Petrillo*, 332 U. S. 1); or whether a crime in-

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volves "moral turpitude" (*Jordan v. De George*, 341 U. S. 223). See also *United Public Workers v. Mitchell*, 330 U. S. 75, 103-104 (Hatch Act: "active part in political management or in political campaigns"). Men can constitutionally be required to make these determinations, each of which involves a general standard of considerable latitude.<sup>23</sup>

The Lobbying Act, as applied here, makes no greater demands on those who come within its compass, for a very specific and easily foreseeable content has been given to the general terms of the statute. In addition, the requirement of a deliberate purpose to influence federal legislation relieves the Act of the basic "objection that it punishes without warning an offense of which the accused was unaware". *Screws v. United States*, 325 U. S. 91, 102.<sup>24</sup> With the specific subordinate standard applicable here and this element of *scienter*, there can be no entrapment of the innocent or the unwary.

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<sup>23</sup> For other cases, see *American Communications Assn. v. Douds*, 339 U. S. 382, 412-3; *Dennis v. United States*, 341 U. S. 494, 515; *Screws v. United States*, 325 U. S. 91; *Williams v. United States*, 341 U. S. 97; *Gorin v. United States*, 312 U. S. 19; *Nash v. United States*, 229 U. S. 373; *Miller v. Strahl*, 239 U. S. 426, 434; *Bandini Co. v. Superior Court*, 284 U. S. 8, 17-18; *Sproles v. Binford*, 286 U. S. 374, 392-3.

<sup>24</sup> See *American Communications Assn. v. Douds*, 339 U. S. 382, 413; *Dennis v. United States*, 341 U. S. 494, 515; *Boyce Motor Lines v. United States*, 342 U. S. 337, 342; *Gorin v. United States*, 312 U. S. 19, 27-28; *United States v. Ragen*, 314 U. S. 513, 524; *United States v. Wurzbach*, 280 U. S. 396, 399; *Omaechevarra v. Idaho*, 246 U. S. 343, 348.

D. THE "PRINCIPAL PURPOSE" REQUIREMENT OF SECTION 307 HAS SUBSTANTIAL APPLICATION ONLY TO DEFENDANT NATIONAL FARM COMMITTEE AND ITS APPLICATION TO THAT DEFENDANT IS CLEAR

Section 307 of the Lobbying Act states, in part, that:

The provisions of this title shall apply to any person \* \* \* who \* \* \* directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

\* \* \* \* \*

The District Court in the *N. A. M.* case held that the reference to "principal purpose" was so vague as to be meaningless. See 103 F. Supp. 510, 514. Presumably, the court's reference in this case to the *N. A. M.* holding (R. 39) means that the alleged indefiniteness of the "principal purpose" language was also thought to be present here.

1. Actually, however, the "principal purpose" aspect of Section 307 has little to do with this case. Section 307 refers to any person who "solicits, collects, or receives money" to aid, or "the principal purpose of which person is to aid," in the influencing of legislation. The reporting requirements of Section 305, however, apply not only to persons soliciting but also to those "expending any money for the purposes designated in subparagraph (a) or (b) of section 307," *i. e.*, the purposes of influencing legislation. Thus, the

“principal purpose” language of Section 307 would appear to have no application to those making *expenditures* (as distinguished from those receiving *contributions*) for the purpose of influencing legislation. In the instant case, all of the Section 305-307 counts, with the exception of count X against the National Farm Committee, are predicated on the fact that “expenditures” were made for the purposes designated in Section 307, and not on the fact that some person had “solicited, collected, or received” funds for those purposes. All that it seems necessary to prove is that the expenditures were actually made for the purposes set forth in subparagraphs (a) or (b) of Section 307.

2. If the “principal purpose” language does apply to “expenditures” as well as “contributions,” the statute poses no problem whatever as to defendants Harriss or Moore. The “principal purpose” requirement is worded alternatively. It suffices to bring a person under the Act if either (i) that person’s principal purpose is “to influence” federal legislation, or if (ii) that is the principal purpose of the contribution itself, or of the expenditure itself (if the latter is to be included).<sup>25</sup> However great a problem it may be

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<sup>25</sup> The language of Section 307 is “The provisions of this title shall apply to any person \* \* \* who \* \* \* directly or indirectly, solicits, collects, or receives \* \* \* *any \* \* \* thing of value to be used principally to aid, or the principal purpose of which person is to aid \* \* \**.” [Emphasis added.]

to determine the principal purpose of a person, there is usually little difficulty in determining whether the principal purpose of a specific contribution or expenditure is to accomplish one of the statutory purposes. In this case, specific expenditures are listed, and it is charged that their principal purpose was the affecting of designated legislation. This raises a precise issue capable of proof or disproof in ordinary course, just as if the inquiry was solely as to the "purpose" (unqualified by the adjective "principal") of the expenditures. See *United States v. Wurzbach*, 280 U. S. 396 (discussed *supra*, pp. 50-51); *Burroughs and Cannon v. United States*, 290 U. S. 534.

Consequently, with respect to all the Section 305 counts, except that against the National Farm Committee, the short answer to the court below is that the "principal purpose" requirement is either inapplicable or it is met easily and without any doubt.

3. Count X, against the National Farm Committee, does allege that that organization, which was one whose principal purpose was to influence legislation, received money to be used principally to aid in the passage and defeat of legislation relating to agricultural commodities; specifically, the charge is that it received a check for \$1,000 from Harriss for the purpose of influencing and attempting to influence such legislation. Irrespective of the "principal purpose" of the organization, the count charges a violation of Sec-

tions 305 and 307 under the alternative requirement of Section 307 that reports be made by persons receiving contributions principally to aid the accomplishment of the purposes specified in Section 307. And it is clear that the specific contribution which is alleged in count X was a single-purpose contribution—that the one purpose was to influence the passage or defeat of legislation which would, respectively, enhance or depress farm prices.

For the present case it is enough that the information charges that the contribution was obtained for the purpose of influencing legislation.<sup>26</sup> The statute is definite and explicit enough to inform a person receiving money for such a purpose that he is within its terms. The “principal purpose” language of Section 307 (pp. 54–55, *supra*) is designed to make clear that the fact that the contributions are multi-purposed will not necessarily preclude coverage under the Act. Cf. Futor, *An Analysis of the Federal Lobbying Act* (1949), 10 Fed. B. J. 366. Where contributions have several purposes, the qualifying word “principal” may possibly raise problems, but no problems of indefiniteness are presented where, as in this case, contributions are obtained solely for the purpose of influencing legislation, particularly

<sup>26</sup> The additional allegation that the principal purpose of the Farm Committee was to influence the passage or defeat of legislation does not appear in the operative paragraphs of count X, *i. e.*, paragraphs 6 and 7.

when "influencing" is interpreted, as discussed above (*supra*, pp. 25-42), to mean acts of directly contacting or stimulating direct contact with Congress. The National Farm Committee cannot properly complain of any vagueness in the charge against it in this information.<sup>27</sup>

II. SECTION 308 OF THE ACT IS NOT UNCONSTITUTIONALLY INDEFINITE AS APPLIED TO THE COUNTS LAID UNDER THAT SECTION

*A. As applied to those who are hired either to express views to Congress or to cause others to do so, Section 308 is sufficiently definite.*—The Dis-

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<sup>27</sup> In the court below, defendants also contended that the statutory definition of "legislation" in Section 302 (*infra*, pp. 89-90) is too vague because it includes—in addition to "bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress"—"any other matter which may be the subject of action by either House." Like so many of defendants' arguments below, this contention has no place in this case, for the information makes it quite clear that it uses the term "legislation" in the ordinary sense of bills and legislative proposals already being, or just about to be, considered by Congress, its committees, or its members. See, especially, paragraphs 1 through 8 of count I (R. 1-4), which are incorporated into the other nine counts. Whatever may be the difficulties in other circumstances with the phrase defendants attack, there are no real problems here, particularly since the charges concern direct or stimulated contact with Congressmen. We may point out in passing, however, that the critical phrase, "which may be the subject of action by either House," can be read as referring to "other matters" which "are" being considered by Congress, its organs, or its members, or which "are" being presented at that time to some member of Congress. The statute would not appear to cover matters merely being debated in the schools.

trict Court did not hold Section 308 unconstitutionally vague. It held Section 308 unconstitutional because the penal provision of Section 310 (b) was unconstitutional, and because Sections 308 and 310 (b) were thought to be inseparable. We discuss this separability problem in Point IV, *infra*, pp. 75-80.

The defendants argued below, however, that Section 308 was unconstitutionally vague (a) because it could not be determined what was meant by "influencing" legislation as defined in the statute, and (b) because Section 308, although self-sufficient on its face, seems inconsistent with Section 307 which states the persons to whom the Act is applicable. We have already discussed the meaning of "influencing" legislation, and have shown that at the minimum it covers direct communication with Congress and the intentional stimulation of direct representations. *Supra*, pp. 25-42. Like Sections 305 and 307, Section 308 is not too indefinite to govern this case.

Section 308 does not refer to Section 307 and is not governed by it. Section 308 covers one "who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States." There is nothing mysterious about the concept of hiring oneself out to do a job, and the language "engage himself for pay or for any consideration" plainly embraces that notion.

The history of the legislation shows that the provisions for the registration of paid lobbyists grew out of a different bill from those which sought to require disclosures by groups and individuals who collected moneys for lobbying purposes.<sup>28</sup> There is, therefore, nothing in the legislative history which requires Section 308 to take on additional requirements from Section 307. But even if the persons described by Section 308 would have also to meet the description of 307, the result would be the same. Section 307 is specifically applicable to those who receive money to be used principally to aid the passage or defeat of legislation. See *supra*, pp. 54 ff. Presumably, the receipt of money for lobbying services by a professional lobbyist is the receipt of money principally to aid the passage or defeat of legislation.

The defendants also argued below that Section 308 was unconstitutionally vague because it is "so all embracing in that it requires the person who has engaged himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of legislation 'before doing anything in furtherance of such object' to register" (R. 25). The argument runs that "do-

<sup>28</sup> This provision, now Section 308 of the Act, grew out of S. 2512, 74th Cong., which dealt only with paid lobbyists (see fn. 12, *supra*, p. 37); Sections 305 and 307 of the Act grew out of the major provisions of H. R. 11223 and 11663. See *supra*, pp. 36-42.



ing anything" includes so much that "men of common intelligence must guess at what is really meant shall constitute an offense \* \* \*" (R. 25).

It is plain, however, that the phrase "doing anything" refers to acts done consciously, in exchange for pay or other consideration, in pursuit of the passage or defeat of legislation. The defendants' complaints on this score seem to us to come down to the proposition that Congress cannot require them to distinguish between the positions they take with respect to legislation because they are paid to do so and those positions representing a genuine unsolicited conviction. Not only is this position unsound on its face, but the information further aids defendants by specifying in each instance the acts done by them without registering. See R. 4-6, 20-21.

B. *Defendants Moore and Linder were hired to express views to Congress and to cause others to do so.*—It is clear that counts I and IX charge defendants Moore and Linder with offenses under Section 308. Count I alleges that Moore "engaged himself for pay and for other consideration on behalf of Robert M. Harriss for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the prices of agricultural commodities and commodity futures and (b) the defeat of legislation by the Congress of the United States which would cause a decline of prices of agri-

cultural commodities and commodity futures” (R. 4). The count alleges in considerable detail the acts done to carry out this undertaking—the procurement, on various and sundry occasions, of witnesses, private individuals, and southern agricultural associations to take positions before Congress and Congressmen with respect to certain legislation.

As to Linder, it is alleged that he engaged himself “for pay and for other consideration on behalf of the defendants \* \* \* Moore and \* \* \* Harriss for the purpose of attempting to influence, directly and indirectly, (a) the passage of legislation by the Congress of the United States which would cause a rise in the price of agricultural commodities and commodity futures, and (b) the defeat of legislation by the Congress \* \* \* which would cause a decline [in such prices]” (R. 20). The information also alleges that Linder, “acting outside of and apart from his official capacity, in furtherance of the objects and purposes for which he had theretofore received money and other things of value \* \* \* [helped to organize] the Farm Commissioners Council \* \* \* made a statement before the Senate Committee on Agriculture of the Congress of the United States, using material prepared by one Dr. Clair, opposing proposed legislation which would tend to reduce the prices of farm commodities [and] on or about the fall of the year 1946,

at a dinner alleged to have been sponsored by the Association, Southern Commissioners of Agriculture, staged at the Mayflower Hotel, in Washington, D. C., at which about 200 members of Congress were present, the defendant Tom Linder delivered a speech in which he urged Congress to enact legislation ending the Office of Price Administration controls of prices" (R. 21).

As they are charged, both Moore and Linder were acting to bring pressures to bear directly on Congress, but in such a fashion that Congress had no idea where the sponsorship of their ideas lay. Moore almost consistently spoke through the medium of others. And though Linder talked for himself, he permitted it to be supposed, according to the information (see fn. 20, *supra*, p. 47), that he spoke only as the State Commissioner of Agriculture for Georgia; the charge is that he had a personal, financial stake outside of his job in such a way as to permit the inference that he was being paid to divide his loyalties between Georgia, on the one hand, and his own personal interests as well as those of Moore and Harriss, on the other. It was, partly, to avoid precisely this type of situation that the Lobbying Act was passed. *Supra*, especially p. 32. There is not the slightest reason to suppose that those who were acting as did Moore and Linder could not have determined that the Act required their registration.

### III. AS APPLIED HERE, SECTIONS 305, 307, AND 308 OF THE ACT DO NOT VIOLATE THE FIRST AMEND- MENT

The District Court did not hold Sections 305, 307, or 308 of the Lobbying Act invalid under the First Amendment, but the defendants strenuously insisted on that contention below. See R. 24, 32, 33, 35. For that reason, we answer it here.<sup>29</sup>

A. The First Amendment guarantees to the defendants, as to all others, the right to petition Congress; and the expression of views to Congress in groups or through agents is admittedly an exercise of the right to petition. But it is equally clear that the right to petition, like other First Amendment freedoms, may be qualified, in certain circumstances, if necessary to protect other interests in the community whose preservation is of sufficient importance. The limitation on the freedom to teach and advocate the idea of forceful and violent overthrow of the Government is only a recent and dramatic example of this point. *Dennis v. United States*, 341 U. S. 494.

The problem, then, in the present case is to determine the nature and extent of the restraint, if any, which has been imposed on the defendants'

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<sup>29</sup> The Court has apparently held that it has power, under the Criminal Appeals Act, to consider constitutional contentions other than those passed on by the District Court. See *United States v. Spector*, 343 U. S. 169, 172; *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, 330.

right to petition; and then to determine whether the interest in favor of which the restraint has been imposed can justify a limitation of this type.

The restraint, if it be one, is certainly not a direct or a heavy one. The conduct of those attempting to influence the passage or defeat of legislation is not prohibited or made criminal. They are not forbidden to make their views known or to hold beliefs. It is simply provided that under certain circumstances there must be disclosure of specified *facts*; and disclosure is required, not on the basis that anything improper is being done, but merely as an impartial register of those whose concern with their affairs before Congress is great enough so that they spend, or solicit, money to pay or induce people to make certain kinds of presentations to Congress. There is no choice among differing political opinions and no singling out of selected activities or views for disclosure. All must be reported alike and no stigma is attached to those who register and report.<sup>30</sup>

On the other hand, the interest in favor of which this restraint has been imposed is fundamental to the legislative process. The intricate back-and-forth process between representative

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<sup>30</sup> For the most recently published lists of those registering and reporting under the Act, see 99 Cong. Rec. 60 ff. (daily ed.; Jan. 3, 1953), 2881 ff. (daily ed.; April 7, 1953); 6784 ff. (daily ed.; June 15, 1953). There is a wide representation of occupations, professions, organizations, and individuals, both notable and unknown.

and represented, which is the gist of the democratic form of government, has brought forth two central problems with which Congress can rightly concern itself. The first is to ascertain correctly the true will, desires, needs, and hopes of the people as a whole, and of the different groups in the Nation. The other aim is to secure the facts, all the facts, on which to build legislative action. Without both kinds of knowledge, legislation is hobbled and to that extent representative government fails in its exacting goals.<sup>31</sup>

For at least forty years,<sup>32</sup> Congress has been much concerned with the relationship between these two prime ends of opinion-finding and fact-finding, on the one hand, and the individuals, groups, and organizations which seek to encourage or retard Congressional action, on the other. There have been many, inside Congress and out, disturbed by the thought that proper attainment of the two fundamental aims has been partially frustrated by persons with special axes to grind. Congress, in legislation, has an obligation to the general welfare which "is not the mere sum \* \* \*

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<sup>31</sup> The Legislative Reorganization Act of 1946 resulted, of course, from a deep concern with both aspects. It was not accidental that the Regulation of Lobbying Act was part of the Legislative Reorganization Act.

<sup>32</sup> See Lane, *Some Lessons From Past Congressional Investigations of Lobbying*, 14 Pub. Opin. Quar. 14; Brief for the United States, *United States v. Rumely*, Oct. Term, 1952, No. 87, pp. 30ff.

of Maine potatoes, Texas oil, Wyoming wool, Colorado silver, Mississippi cotton, and Georgia peanuts." Hearings, House Select Committee on Lobbying Activities, 81st Cong., 2d sess., pt. 1, p. 100. As those interests, and their like, have borne down upon it, Congress has repeatedly undertaken to determine for itself how much it has been subject to pressures only partially representative of the total interest, and how much these pressures have distorted its functioning.

The remedy has not been to silence or prohibit the "interest" or "pressure" groups, but to utilize a measure of factual disclosure in an attempt to remedy the distortion which Congress has found, without forbidding or limiting in any way the expression of ideas. In the present context, there would, of course, be indirect disclosure of the political ideas or actions of some persons whose views or activities may now be relatively private (*e. g.*, defendants Harriss, Moore, and Linder), but only to the extent that they affirmatively engage in attempting to affect federal legislation by communicating to Congress or inducing others to communicate. And such disclosure of these activities and views enables Congress and the public, it is believed, better to appraise the source and true worth of the facts and arguments brought forth, and thus to reach wiser judgments on proposed federal legislation.<sup>33</sup>

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<sup>33</sup> In addition to the Federal Government, over twenty states seek to regulate some aspects of lobbying through dis-

The legislative interest is so important and the means adopted for its preservation so moderate that it is difficult to believe that the possible deterrence of some communication with Congress or Congressmen by certain individuals can be the abridgment of freedom which the First Amendment prohibits. This Court and informed opinion have always refused to see illegality in comparable minor "restraints" of this character, where a significant social end was being served by the legislation. Thus, in *Burroughs and Cannon v. United States*, 290 U. S. 534, the Court sustained the statute requiring disclosure by those who attempt to influence the outcome of presidential elections by soliciting contributions or making expenditures for that purpose, although it is clear that such a disclosure requirement would cause some to forego support of the candidate of their choice. The Court, in an opinion with major and special relevance to the present problem, both because of the fact that the language of the earlier act was the basis of the present statute and also because of the similarity of the interest involved, stated its view as follows (290 U. S., at 545):

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closure (see Note, (1947) 47 Col. L. Rev. 98, 99-103; Comment (1947) 56 Yale L. J. 304, 313-316). Almost all the states require disclosure of campaign contributions and some also regulate political advertisements and circulars (Nutting, *Freedom of Silence: Constitutional Protection Against Governmental Intrusions in Political Affairs*, (1948) 47 Mich. L. Rev. 181, 204-206).



The importance of his [the President's] election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.

Civil and criminal libel and slander law undoubtedly deters some people from communicating ideas which are actually permissible, but which they fear will provoke litigation. But that kind of restraint obviously does not invalidate such laws. Indeed, this Court has recently sustained an Illinois law imposing criminal sanctions on those who publish material which "portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion" or which exposes the citizens of any such group to "contempt, derision, or obloquy \* \* \*"; and this validation was in the face of serious contentions that the proscribed conduct was too vaguely described. *Beauharnais v. Illinois*, 343 U. S. 250. The Court did not regard the restraint flowing from the prohibition of the stat-

ute, or that voluntarily operating on its edges upon people who fear getting uncomfortably close to its reach, as sufficient to invalidate the attempt by Illinois to wrestle with the perennially intractable problem of meliorating troubled racial and religious antagonisms.

It is also true that a requirement that holders of second-class mailing privileges disclose their ownership of the publication probably discourages some who have certain views they would like to express in newspapers or periodicals. But this peripheral discouragement is permitted, in part, so that the public may not be "deceived through ignorance of the interests the publication represents." *Lewis Publishing Co. v. Morgan*, 229 U. S. 288, 312, quoting H. Rep. No. 955, p. 24.

The existence of the Hatch Act probably deters some federal employees from activity permitted by that statute, and, yet, the national interest in a nonpolitical civil service has sufficed to permit the restraint. *United Public Workers v. Mitchell*, 330 U. S. 75. Perhaps, the Smith Act and the sedition statute (*Dennis v. United States*, 341 U. S. 494), the non-Communist affidavit provision of the Labor-Management Relations Act (*American Communications Association v. Douds*, 339 U. S. 382), and the employer free speech unfair labor practice provisions of the National Labor Relations Act (*National Labor Relations Board v. Virginia Elec. & Power Co.*, 314 U. S. 469), have all

had comparable effects on certain individuals. But, in each case, broader interests in the safety and the economic order of the community have made these tangential restraints permissible. Even the prospect of being called as a witness in a proceeding before a court or other tribunal, or of being investigated by a public or private agency, may discourage some people from uttering, even privately, wholly permissible ideas.<sup>34</sup>

In short, there is frequently self "censorship" or self-restraint in expression or communication growing out of, but going beyond, a requirement of law. But the First Amendment has never been thought, for that reason, to invalidate the law or other Government action because of these tangential, voluntary consequences. Caution, timidity, a desire for privacy or to be free from controversy or litigation, may all cause people voluntarily to refrain from expressing their views in order to avoid all chance of incurring some legal sanction—which is not actually imposed on or related to the expression of those views—but it does not follow from this that any law has abridged their First

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<sup>34</sup> The National Labor Relations Act (*Associated Press v. National Labor Relations Board*, 301 U. S. 103), the Fair Labor Standards Act (*Oklahoma Press Publishing Co. v. Walling*, 327 U. S. 186), and the Sherman Act (*Associated Press v. United States*, 326 U. S. 1), as well as the income tax, may likewise have affected publication by existing or potential publishers.

Amendment freedoms.<sup>35</sup> The burden, non-existent for some, of first importance for others, is merely a consequence of the hard and enduring fact that most of the truly effective pressures and sanctions on conduct are private or internal, protection from which simply cannot be the business of the First Amendment.

B. The case may be put more affirmatively in somewhat different aspect. The basic legislative problem here is to preserve the conditions under which the legislative process can function, independently and intelligently. The technique of disclosure is thought by many to permit such independent and intelligent operation. The permissible purposes of this technique were summarized in the dissenting opinion of Mr. Justice Black in *Viereck v. United States*, 318 U. S. 236, involving the Foreign Agents Registration Act (22 U. S. C. 611, *et seq.*) (in which the Court found it unnecessary to pass on the statute's constitutionality because it held Viereck's activities not within its purview). Mr. Justice Black said (at p. 251):

\* \* \* Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of foreign origin so that hearers and readers

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<sup>35</sup> This is all the more true, of course, when the feared sanction is not legal at all but social or economic, such as a hostile public reaction resulting from disclosure of opinions or activities.

may not be deceived by the belief that the information comes from a disinterested source. *Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment.* \* \* \*  
[Emphasis added.]

On this view, disclosure—because it implements the conditions precedent to free and intelligent judgment, particularly in a large, diverse, and segmented political economy—is not improper merely because it may restrain some whose purveyance of their ideas is more effective or congenial when it is anonymous. The test of conformity with the First Amendment cannot be limited to the disclosure requirement *in vacuo*; rather, the test must consider the effectiveness of the disclosure to forward the conditions which underlie the body of political freedoms protected by the Amendment.

In *Associated Press v. United States*, 326 U. S. 1, this Court, in sustaining an antitrust prosecution against a press association, answered an objection that the prosecution was prevented by the First Amendment, by saying (at p. 20):

The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free

press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests. The First Amendment affords not the slightest support for the contention that a combination to restrain trade in news and views has any constitutional immunity.

This was express recognition that it is the legitimate business of Congress to maintain the conditions on which freedoms of expression depend. The present legislation has a comparable goal. A primary aim of the right to petition and the other First Amendment rights is to keep open the channels of communication between the represented and the representative. When Congress finally drew the conclusion, out of its experience of many decades, that the integrity of the legislative process was threatened by its inability to appraise the sources of the stream of demands flowing from the "public," it sought to free the channels by requiring disclosure of the sponsorship of those seeking to influence it directly. What Con-

gress attempted is to remove anonymity from those who are operating in certain concealed ways to convey their views on legislation, and thus, in a measure, to make itself more responsible to the public it represents. It would be remarkable if the freedom to speak of those who have funds and agents to enhance themselves were held to be infringed by legislation designed to preserve a meaningful freedom to speak for all, as well as a meaningful responsibility of the representative to the represented, without respect either to the accidents of finance or the artifices of publicity. Cf. *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63, 72.<sup>36</sup>

IV. THE INFORMATION SHOULD NOT HAVE BEEN DISMISSED ON THE BASIS OF THE ALLEGED INVALIDITY OF THE PENAL PROVISION OF SECTION 310 (B) WHICH IS PLAINLY SEPARABLE

A. Section 310 (a) of the Lobbying Act provides for a fine of not more than \$5,000 or imprisonment for not more than twelve months for a violation of the Act (*infra*, pp. 94-95).

Section 310 (b) states:

In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from

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<sup>36</sup> See the Report of the President's Committee on Civil Rights (*To Secure These Rights*, 1947), pp. 52-53, 164, approving disclosure legislation broader than the Federal Regulation of Lobbying Act, as it is applied in this case.

the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

Judge Holtzoff invalidated Section 308 because he found the penal provision of Section 310 (b) unconstitutional and inseparable, and also gave this as an alternative ground for striking down Section 305 (R. 39-40). In our view, it is not necessary to decide whether Section 310 (b) is constitutional. The District Court's holding that Sections 305 and 308 of the Act are invalid because of the penal provisions of Section 310 (b) was clearly wrong in the face of the separability clause, applicable to the whole Legislative Reorganization Act, which provides that "if any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby." 60 Stat. 812, 814, *infra*, p. 95.

Examination of the statute shows that Section 310 (a) makes a violation of either Section 305



or 308 a misdemeanor, punishable by fine or imprisonment or both. The prohibition of Section 310 (b) is expressly stated to be "in addition to the penalties provided for in subsection (a)." Thus, if Section 310 (b) were eliminated, there would still be left a statute defining specific duties and providing a specific penalty for violation of any such duty. The elimination of the additional penalty in Section 310 (b) in no way affects the construction of the Act or the nature of the duties prescribed thereby. It is difficult, very difficult, to conceive of a section which could be severed with less effect on the structure of the Act as a whole. Congress undoubtedly did not desire the whole Act to stand or fall on this supplemental and minor penalty. Therefore, any possible invalidity in Section 310 (b) does not invalidate either Section 305 or 308. Compare *Electric Bond & Share Co. v. Securities and Exchange Commission*, 303 U. S. 419, 433-437; *Kay v. United States*, 303 U. S. 1, 6-7, 8; *Watson v. Buck*, 313 U. S. 387, 395-397. See, also, *infra*, pp. 84-85.<sup>37</sup>

The separability argument may be approached in another way: The contention that a penalty is improper cannot normally be made by one against whom the penalty has not been imposed. This

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<sup>37</sup> In *National Assn. of Mfrs. v. McGrath*, 103 F. Supp. 510 (D. D. C.), vacated as moot, 344 U. S. 804, the three-judge court, speaking through Judge Holtzoff, expressly held Section 308 severable from Section 305.

point was involved in *United States v. Wurzbach*, 280 U. S. 396, in which an indictment under the Federal Corrupt Practices Act had been dismissed on the basis of the invalidity of the substantive portions of the statute. In support of the judgment the defendant argued in this Court that the Act was unconstitutional because it was uncertain and vague as to which of the several sections imposed the penalty (Brief for Appellee, No. 66, O. T. 1929, pp. 19, 24). The Court, by Mr. Justice Holmes, held that the objection on this score was premature (p. 399):

It is said to be uncertain which of several sections imposes the penalty and therefore uncertain what the punishment is. *That question can be raised when a punishment is to be applied.* [Emphasis added.]

The *Wurzbach* case involved the contingency that the inability to determine which of two penal provisions was applicable would make enforcement of the statute impossible. If in that situation the penal provision cannot be attacked prior to its application, it must be beyond debate that such a provision cannot be attacked where it is so clearly separable from an unquestionably valid penal provision like Section 310 (a).

B. If the validity of Section 310 (b) is to be reached, we suggest that, properly read, it is sustainable.

We have shown that the statute means at least to cover (a) the so-called professional lobbyists,

*i. e.*, those who engage themselves for pay to influence the passage or defeat of legislation, and (b) organizations and persons who solicit or spend money for the purpose of paying others to communicate with Congress or of conducting campaigns to induce other people to express their views to Congressmen. It is clear that the prohibitions of Section 310 (b) against "attempting to influence \* \* \*" can bear a similar meaning; and, if necessary to sustain its constitutionality, the section would have to bear that meaning. As a matter of fact, Section 310 (b) bears some internal evidence that it was intended to operate more narrowly than the rest of the Act. For, unlike Sections 307 and 308, the word "proposed" is added before "legislation." Both Sections 307 and 308 predicate coverage under the Act on acts done with a purpose to "influence \* \* \* the passage or defeat of any legislation by the Congress \* \* \*," while Section 310 (b) prohibits the attempt to influence "the passage or defeat of any *proposed* legislation \* \* \*" [Emphasis added]. It would seem that in adding the word "proposed" in Section 310 (b) Congress added a definite limitation,<sup>38</sup> which may well limit the reach of the penalty provision to direct contact with Congress, or the stimulation of direct contact, on behalf of others. In like vein, the pro-

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<sup>38</sup> There was no comment on the purpose of this provision in the legislative reports on the bill nor on the floor of either House.

hibition on appearances before a Congressional committee can easily be read as referring to paid appearances on behalf of others and not to appearances in one's own behalf.

So interpreted, Section 310 (b) does not appear very different from the temporary suspension of the professional license of a lawyer, accountant, or doctor for some misconduct or failure to abide by a statutory requirement. The convicted lobbyist similarly loses, for a three years period, his occupational right to communicate with Congress on behalf of others or to induce others so to communicate. Furthermore, this penalty is certainly less drastic than the deprivation of a convicted felon's civil rights or the disqualification of some offenders from holding any office of honor, trust, or profit under the United States (*e. g.*, 18 U. S. C. 202, 205, 206, 207). Convicted prisoners' rights and freedoms are also subject to severe limitations. See *Price v. Johnston*, 334 U. S. 266, 285; *Stroud v. Swope*, 187 F. 2d 850 (C. A. 9), certiorari denied, 342 U. S. 829; *Numer v. Miller*, 165 F. 2d 986 (C. A. 9); *Adams v. Ellis*, 197 F. 2d 483 (C. A. 5).

#### V. THE VALIDITY OF THE LOBBYING ACT AS APPLIED TO OTHER SITUATIONS IS NOT BEFORE THE COURT

So far as the present information is concerned, the preceding sections have disposed, we believe, of the grounds on which the District Court held the Lobbying Act invalid, and also of the other

constitutional objections raised below by defendants. However, the District Court and appellees have raised issues of constitutionality which can only emerge in factual settings other than that posed by this case. The *N. A. M.* decision, on which the District Court relied as decisive, did not present, as does this case, only acts of direct contact with Congress or the deliberate stimulation of such direct contact. The constitutional questions raised in that litigation presupposed a broader coverage of the Act than it is necessary to assume for the present litigation. The wider issues of the *N. A. M.* case have been interjected here but they have no proper place, and the Court need not and should not concern itself with resolving them. A familiar set of related principles of constitutional adjudication calls upon the parties and the Court to restrict consideration to the precise question presented by the information against these defendants.

A. The Court has repeatedly announced that it does not pass on issues of validity until they inescapably come before it in concrete form, with the factual background and record appropriate for decision of the precise question; the Court neither renders advisory opinions on hypothetical cases nor declares general constitutional doctrines unrelated to the setting of a particular case.<sup>39</sup>

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<sup>39</sup> See *Federation of Labor v. McAdory*, 325 U. S. 450, 461-2; *United Public Workers of America v. Mitchell*, 330 U. S. 75; *Rescue Army v. Municipal Court*, 331 U. S. 549,

As the Court recently stated in *United Public Workers v. Mitchell*, 330 U. S. 75, in which it refused to entertain a complaint, at the instance of persons who had not violated the Act, that the Hatch Act violated rights under the First Amendment and was unconstitutionally vague under the Fifth Amendment (at pp. 89-90):

The power of courts, and ultimately of this Court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other.

These doctrines, which have been explicitly applied to constitutional cases under the Criminal

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568 ff, and earlier cases there collected; *United States v. Petrillo*, 332 U. S. 1, 5; *Toomer v. Witsell*, 334 U. S. 385, 394; *Parker v. Los Angeles County*, 338 U. S. 327, 333; *District of Columbia v. Little*, 339 U. S. 1, 3-4; *Sweatt v. Painter*, 339 U. S. 629, 631; *Touhy v. Ragen*, 340 U. S. 462, 469; *United States v. Hayman*, 342 U. S. 205, 223; *United States v. Rumely*, 345 U. S. 41, 48.

Appeals Act (*United States v. Petrillo*, 332 U. S. 1, 5, 10-12; *United States v. Spector*, 343 U. S. 169, 172), counsel against determination here of any case other than that of these four defendants as they are charged in the ten counts of the present information. Neither the *N. A. M.* case nor any other litigation which may raise broader issues is here for decision, and the circumstances upon which will turn the applicability and validity of the Lobbying Act as it applies to those other cases are not now before the Court.

B. Appellees' complaint is also limited to their own case by the principle that they have standing to challenge the validity of legislation only on their own behalf and only as it affects them adversely. They cannot challenge the statute by flaunting the rights of others, whether the cases be actual or hypothetical. *United States v. Wurzbach*, 280 U. S. 396, 399; *Robinson v. United States*, 324 U. S. 282, 286; *Kuehner v. Irving Trust Co.*, 299 U. S. 445, 455.<sup>40</sup> For instance, in Chief Justice Vinson's opinion in *Dennis v. United States*, 341 U. S. 494, 515-516, it was pointed out that the defendants, convicted for conspiracy to teach and advocate the violent overthrow of the Government, could not complain of possible difficulties in the application of the statute to other persons and in other circumstances. So here, we do not believe that defendants should

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<sup>40</sup> As its opinion states, *Barrows v. Jackson*, 346 U. S. 249, 255-260, rests on a "unique situation."

be permitted to attack all possible applications of the statute where their conduct brings them within a clearly defined area validly covered by the legislation.<sup>41</sup>

C. A third governing principle is that of separability. The defendants' contention is that a valid application of the "purpose" language of Section 307 cannot be permitted to stand because of a possibly too broad separate application of that same language in other cases. But there can be no question that the Lobbying Act can without difficulty be applied to those factual situations which validly come with it, and that Congress intended it to stand insofar as it possibly could. It contains a separability clause (*infra*, p. 95) and, by its very terms, that clause is enough to establish the strongest of presumptions in favor of divisibility as to both separate provisions and separate applications of the same provision. *Supra*, pp. 76-77. Judge Cardozo stated in *People ex rel. Alpha Portland Cement Co. v. Knapp*, 230 N. Y. 48, 60, 129 N. E. 202, 207:

\* \* \* Severance does not depend upon the separation of the good from the bad by paragraphs or sentences in the text of the enactment \* \* \*. The principle of divi-

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<sup>41</sup> A statute may, of course, be invalid as applied to one set of facts and valid as applied to another. *St. Louis, Iron Mountain & Southern Ry. Co. v. Wynne*, 224 U. S. 354; *Kansas City Southern Ry. Co. v. Anderson*, 233 U. S. 325; *Poindexter v. Greenhow*, 114 U. S. 270, 295; *Federation of Labor v. McAdory*, 325 U. S. 450, 462.



sion is not a principle of form. It is a principle of function.

The test is whether the constitutional and unconstitutional provisions and applications of a statute are "so mutually connected with and dependent on each other \* \* \* as to warrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently." *Warren v. Mayor of Charlestown*, 2 Gray (Mass. 1854) 84, 99; see also Brandeis, J., in *Dorchy v. Kansas*, 264 U. S. 286, 289-290; *Carter v. Carter Coal Co.*, 298 U. S. 238, 322 (Hughes, C. J., dissenting).<sup>42</sup>

There is no doubt that Congress would have intended the Lobbying Act to operate on the narrower basis we have suggested, even if a broader application to opinion-molding agencies<sup>43</sup> were prohibited. The legislative history we have collated above (*supra*, pp. 29-42) shows a strongly felt Congressional desire to deal with all those who communicate with Congress, including the initiators of letter-writing campaigns from the "grass roots."

D. Still another controlling principle is that the possible existence of borderline, peripheral, or difficult cases does not invalidate a statute, or

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<sup>42</sup> The subject is discussed more fully in Stern, *Separability and Separability Clauses in the Supreme Court*, 51 Harv. L. Rev. 76.

<sup>43</sup> Such as the Committee for Constitutional Government, involved in *United States v. Rumely*, 345 U. S. 41.

make it unconstitutionally indefinite, when it can be properly applied to the set of circumstances before the Court. For instance, in *United Public Workers v. Mitchell*, 330 U. S. 75, 103-104, the Court upheld the Hatch Act's proscription against taking "any active part in political management or in political campaigns," as applied to the clear case of a ward executive committee-man and worker at the polls, but expressly refused to examine any further at that time into the validity of the general standard.<sup>44</sup>

There is therefore no warrant to trespass beyond this case in the charge that the Lobbying Act would be unconstitutional if it were applied to the National Association of Manufacturers or to some other litigation which may come in the future or may never arise.<sup>45</sup>

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<sup>44</sup> See also, *Williams v. United States*, 341 U. S. 97, 101-2; *Jordan v. De George*, 341 U. S. 223, 231-2; *Dennis v. United States*, 341 U. S. 494, 516; *Beauharnais v. Illinois*, 343 U. S. 250, 263-4; *United States v. Petrillo*, 332 U. S. 1, 7; *Robinson v. United States*, 324 U. S. 282, 286; *United States v. Wurzbach*, 280 U. S. 396, 399.

<sup>45</sup> Even if the broader interpretations of some of the statements in *Thornhill v. Alabama*, 310 U. S. 88, 97-98, on the status of legislation touching on free speech, are now the law, there are several reasons why that ruling does not control here:

(1) it applies primarily to State court decisions where this Court's power to interpret the statute is limited and the State court's construction must be accepted (see *Dennis v. United States*, 341 U. S. 494, 501-2); where a federal statute is in issue this Court has at hand the remedy of interpreta-

Guided by each of these fundamental principles, we abstain from discussing the validity of the Lobbying Act in circumstances other than those presented by this particular information. It is our earnest hope that the Court will refuse, once again, "to strike down a statute as violative of \* \* \* constitutional guarantees \* \* \* when the statute has not been, and might never be, applied in such manner as to raise the question [defendants] ask us to decide." *United States v. Petrillo*, 332 U. S. 1, 11.

tion (cf. *Winters v. New York*, 333 U. S. 507, 510; *Fox v. Washington*, 236 U. S. 273, 277);

(2) the *Thornhill* ruling applied to what the Court believed to be an unlimited and outright ban on one form of free communication, and not merely, as here, a possible minor restriction on a form of communication;

(3) *Thornhill* concerned a direct regulation of free speech and not, as here, a regulation of other conduct (*i. e.*, reporting and registration of certain political conduct) which affects speech only incidentally and tangentially (cf. *United States v. Petrillo*, 332 U. S. 1).

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the District Court be reversed and the case remanded to that Court for further proceedings on the information.

✓ ROBERT L. STERN,  
*Acting Solicitor General.*

W WARREN OLNEY III,  
*Assistant Attorney General.*

↓ OSCAR H. DAVIS,  
*Special Assistant to the Attorney General.*

↓ BEATRICE ROSENBERG,

↓ JOHN R. WILKINS,  
*Attorneys.*

SEPTEMBER 1953.

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## APPENDIX

### LEGISLATIVE REORGANIZATION ACT OF 1946

\* \* \* \*

#### Title III—Regulation of Lobbying Act [60 Stat. 812, 839; 2 U. S. C. 261-270]

##### SHORT TITLE

SEC. 301. This title may be cited as the “Federal Regulation of Lobbying Act.”

##### DEFINITIONS

SEC. 302. When used in this title—

(a) The term “contribution” includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

(b) The term “expenditure” includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(c) The term “person” includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(d) The term “Clerk” means the Clerk of the House of Representatives of the United States.

(e) The term “legislation” means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Con-

gress, and includes any other matter which may be the subject of action by either House.

#### DETAILED ACCOUNTS OF CONTRIBUTIONS

SEC. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of—

(1) all contributions of any amount or of any value whatsoever;

(2) the name and address of every person making any such contribution of \$500 or more and the date thereof;

(3) all expenditures made by or on behalf of such organization or fund; and

(4) the name and address of every person to whom any such expenditure is made and the date thereof.

(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding \$10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

#### RECEIPTS FOR CONTRIBUTIONS

SEC. 304. Every individual who receives a contribution of \$500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered to the person or organization for which such contribution was received a detailed account thereof, including the name and

address of the person making such contribution and the date on which received.

STATEMENTS TO BE FILED WITH CLERK OF HOUSE

SEC. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing—

(1) the name and address of each person who has made a contribution of \$500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of \$500 or more to such person since the effective date of this title;

(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

(3) the total sum of all contributions made to or for such person during the calendar year;

(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

(b) The statements required to be filed by sub-

section (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

#### STATEMENT PRESERVED FOR TWO YEARS

SEC. 306. A statement required by this title to be filed with the Clerk—

(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its nonreceipt;

(b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

#### PERSONS TO WHOM APPLICABLE

SEC. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

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(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

REGISTRATION WITH SECRETARY OF THE SENATE AND  
CLERK OF THE HOUSE

SEC. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Con-

gress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

#### REPORTS AND STATEMENTS TO BE MADE UNDER OATH

SEC. 309. All reports and statements required under this title shall be made under oath, before an officer authorized by law to administer oaths.

#### PENALTIES

SEC. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000 or imprisonment

for not more than twelve months, or by both such fine and imprisonment.

(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

#### EXEMPTION

SEC. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.

\* \* \* \* \*

[SEPARABILITY CLAUSE (60 STAT. 812, 814)]

SEC. 1. (b) *Separability Clause*.—If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

# **In the Supreme Court of the United States**

OCTOBER TERM, 1953

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**No. 32**

UNITED STATES OF AMERICA, APPELLANT

v.

ROBERT M. HARRISS, RALPH W. MOORE, TOM  
LINDER, AND NATIONAL FARM COMMITTEE

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*ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA*

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**REPLY MEMORANDUM FOR THE UNITED STATES**

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Respondent Harriss insists that under the Criminal Appeals Act the Court must determine the validity of the Lobbying Act on its "face" without regard to the "particular applications of the statute sought to be made in an information filed thereunder" (Harriss Br. 16), and his brief fires repeated broadsides at the entire Act, paying little attention to the specific charges made against these four defendants in the information now before the Court. This memorandum is devoted to a further consideration of this fundamental position on which Harriss's defense is almost entirely based.

In our main brief (pp. 80-87), we refer to the accepted principles of federal constitutional adjudication which, ever since *Hayburn's Case*, 2 Dall. 409, have moved this Court to refrain from giving advisory or general opinions on constitutionality and have tied constitutional decisions to the case actually before the Court. These principles have been expressly held applicable to constitutional appeals under the Criminal Appeals Act. *United States v. Petrillo*, 332 U. S. 1, 5, 10-12; *United States v. Congress of Industrial Organizations*, 335 U. S. 106, 110; *United States v. Spector* 343 U. S. 169, 172. And in the cases coming here under the Criminal Appeals Act the Court has, as a matter of actual practice, considered the validity of a general criminal statute in the light of the specific facts and circumstances presented in the particular indictment or information. See *United States v. Wurzbach*, 280 U. S. 396, 398, 399 (discussed in Government's main brief, pp. 50-51, 56, 77-78); *United States v. Classic*, 313 U. S. 299 (validity of federal civil rights legislation as applied to primary election in Louisiana); *United States v. Darby*, 312 U. S. 100 (Fair Labor Standards Act); *United States v. Southeastern Underwriters Assoc.*, 322 U. S. 533 (Sherman Act as applied to insurance); *United States v. Petrillo*, 332 U. S. 1 (Lea Act). See also *United States v. Congress of Industrial Organizations*, 335 U. S. 106; *United States v. Williams*, 341 U. S. 58. We know of no case under

the Criminal Appeals Act in which the Court has invalidated a statute without looking to the specific allegations of the indictment or information.<sup>1</sup> Cf. *Fleming v. Rhodes*, 331 U. S. 100 (holding that 28 U. S. C. 1252 gives this Court jurisdiction, on direct appeal, to review "a ruling against the constitutionality of an act of Congress when the ruling of unconstitutionality is made in the application of the statute to a particular circumstance \* \* \* rather than upon the challenged statute as a whole").

Nothing in the language of the Criminal Appeals Act (now 18 U. S. C. 3731) supports the defendants' position or calls upon the Court to reverse its practice. A direct appeal is permitted "from a decision or judgment setting aside, or dismissing any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is founded." 18 U. S. C. 3731. In deciding whether to dismiss an information founded on a federal statute on the ground of invalidity, the

<sup>1</sup> The Court has *upheld*, on direct appeal, an information which repeated the general words of a federal statute (*United States v. Petrillo*, 332 U. S. 1, 5-9, 10) while refusing to pass on the validity of the act as applied to other, more specific, parts of the information until further proceedings had determined whether these specific allegations would be retained and proven (*id.*, at 11-13). This result is entirely consistent with the established principle that the Court will not invalidate a statute unless it has no other choice and until it has an appropriate record.

District Court must, as in every constitutional case in a trial court, consider the act on the record then before it, *i. e.*, as the statute is applied in the challenged information. The court's determination necessarily rests on the relationship of the information to the criminal statute. There is no reason why this Court should be in a different position on appeal and must close its eyes to the record before it.<sup>2</sup> Aside from the serious breach in the established canons of constitutional adjudication through the rendering of an advisory opinion unrelated to any facts or particular application, the result of such a change in approach would be the extraordinary situation of review here on a basis totally different from that of the District Court. Respondent's contention would also mean that since review under the Criminal Appeals Act would be divorced from facts or allegations it would be entirely different from review of the same case if the trial judge had upheld the information, if the allegations of the information had been proved and the defendants convicted, the Court of Appeals had affirmed, and this Court had granted certiorari to consider the very same constitutional issues raised by the original motion to dismiss. Even respondent Harriss

<sup>2</sup> There is no question that where issues of statutory construction are involved under the Criminal Appeals Act the Court looks to "the facts alleged in the indictment." *United States v. Beacon Brass Co.*, 344 U. S. 43, 47; *United States v. Hoy*, 330 U. S. 724, 725; *United States v. Hood*, 343 U. S. 148.

does not contend that where review is via the certiorari route this Court must not look at the record. Though the Criminal Appeals Act does supply a shorter route to this Court, the end of the journey is supposed to be approximately the same place.

Respectfully submitted.

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WARREN OLNEY III,  
*Assistant Attorney General.*

OSCAR H. DAVIS,  
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OCTOBER 1953.



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HAROLD B. WILLIAMS

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1953

No. 32

UNITED STATES OF AMERICA, *Appellant*

v.

ROBERT M. HARRISS, RALPH W. MOORE, TOM LINDER,  
AND NATIONAL FARM COMMITTEE

On Appeal from the United States District Court  
for the District of Columbia

BRIEF FOR RESPONDENT ROBERT M. HARRISS

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---

**BRIEF FOR RESPONDENT ROBERT M. HARRISS**

---

**OPINION BELOW**

The opinion of the District Court dismissing the information (R. 39-40) is reported at 109 F. Supp. 641.

**JURISDICTION**

Jurisdiction of this Court is conferred by 18 U.S.C.  
§ 3731.

## **RESTATEMENT OF QUESTIONS PRESENTED**

1. Whether the indefiniteness and the ambiguities appearing on the face of the Act render it unconstitutional for violation of the Fifth and Sixth Amendments.

2. Whether the Act on its face unconstitutionally abridges the freedoms guaranteed by the First Amendment.

3. Whether the penalty provisions of Section 310(b) are unconstitutional on their face through their abridgement of First Amendment freedoms and operate in consequence to invalidate the Act in its entirety.

## **STATUTE INVOLVED**

The full text of the Federal Regulation of Lobbying Act, 60 Stat. 812, 839, 2 U.S.C. 261-270, is set forth in the Government's brief, at pages 89-95.

## **COUNTERSTATEMENT**

We regard the Government's summary of the Information and the holding of the District Court (Government's brief, pp. 3-14) to be adequate except in the respects now stated.

As shown hereafter (pp. 14-20) the jurisdiction of this Court under the Criminal Appeals Act is limited, in the circumstances of this case, to determining whether the statute is unconstitutional on its face and as Congress has written it. Under the Criminal Appeals Act the Court cannot, as the Government urges it to do in its brief, narrow the scope of its constitutional determination solely to the particular applications of the Lobbying Act which the Information seeks to make by its accusations

against these defendants. To the contrary, the Court can look to the charges of the Information only as an aid to its proper determination of whether the Act is unconstitutional *on its face* and as applied in *all* cases—whether in this case or in any future case that might otherwise arise.

Hence in this brief we refer to specific charges of the Information only for that limited purpose, and with that limited purpose in view we desire to emphasize at the outset that the defendant Harriss, on whose behalf the present brief is filed, stands under the charges of the Information in a different category from any of the other defendants, since he is the *only* defendant whom the Government has *not* charged with having solicited, collected or received any money for the purpose of influencing legislation. Harriss, on the contrary, in Counts VI and VII of the Information (R. 14-17) is charged only with *spending money* for legislative purposes. Harriss for that reason moved for a dismissal in the District Court on the additional ground that the statute on its face had no application to such expenditures (R. 34-36), but the District Court did not pass upon this ground of the motion, and dismissed the charges against him instead on the ground, as he had also urged, that the Act was unconstitutional on its face and in its entirety.

Here we regard such a charge against Harriss to be of importance for the reason that this Court can in the light thereof consider the constitutionality of the Lobbying Act on its face in the knowledge that the arm of the Government charged with the enforcement of the statute has construed it to mean, and has based prosecutions on that construction, that any one spending money to “influence” “legislation” “directly or indirectly”, is liable to the criminal penalties of the Act if he has not registered and filed the required reports. The preposterous consequences of this construction and their signifi-

cance as an additional factor to demonstrate the unconstitutionality of the Lobbying Act upon its face, are discussed hereinafter at pp. 45-50.

The Government's statement of the holding of the District Court appearing on page 13 of its brief appears somewhat inadequate, and in one respect is in error.

The circumstances in which the District Court applied the decision of the Three-Judge Court in *National Association of Manufacturers v. McGrath*, 103 F. Supp. 510, (hereinafter referred to as the *N.A.M.* decision) are clearly stated in the lower Court's opinion (R. 39) as follows:

The Court feels that that case is at least *stare decisis*, if not *res judicata*.

To be sure, the judgment in that case was set aside and the complaint dismissed by the Supreme Court, but merely on the ground that the case had become moot during the progress of the litigation. The Court did not either affirm or reverse the decision of this Court holding this statute unconstitutional, but merely failed to pass on this point. It may well be that the judgment in that case, as I stated before, is not *res judicata*, but the opinion is *stare decisis*, and will be followed by the Court.

Since this *N.A.M.* decision, invalidating (among other sections) Section 305, under which the defendant Harriss is charged, was held by the Court to be controlling in the present case, we are for convenience including the full text thereof as an appendix to this brief (*infra*, pp. 91-98), and page citations thereto will hereinafter be to that appendix and not the official report.

Section 307 of the Act (Government's brief, pp. 92-93) is entitled "PERSONS TO WHOM APPLICABLE", and by its express terms it fixes the applicability of the entire "title", i.e., of the entire Lobbying Act. The Three-Judge Court, referring to this section as (*infra*,

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p. 93) "the vital provision of the pertinent portions of the statute," proceeded to examine its terms in order to determine whether they were so vague and indefinite as to stand in violation of the Fifth Amendment. It said (*infra*, p. 96) that "[t]he clause, 'to influence, directly or indirectly, the passage or defeat of any legislation by the Congress' is manifestly too indefinite and vague to constitute an ascertainable standard of guilt" and that "the conclusion is inescapable that Sections 303 to 307 are invalid." It said further (*infra*, p. 97) that the term "principal purpose" in the same section "is likewise subject to the same criticism." It concluded, not merely as the Government states (on p. 13 of its brief) that Section 305 is therefore unconstitutional, but rather said (*infra*, p. 97):

We conclude that Sections 303 to 307, inclusive, are invalid as contravening the due process clause of the Fifth Amendment in failing to define the offense with sufficient precision and to set forth an ascertainable standard of guilt.

Next, the Three-Judge Court did not characterize the penalty provisions of Section 310(b) as "the prohibition of lobbying," as the Government seems to assert, but referred to this penalty section as follows (*infra* p. 97):

Section 310 of the Act, which relates to penalties, subjects any person who violates the provisions of the Act to a fine of not more than \$5,000, or imprisonment for not more than twelve months, or both. In addition, subsection (b) of Section 310, provides that any person so convicted shall be prohibited for a period of three years from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation, or from appearing before a Committee of Congress in support of or opposition to proposed legislation. Violations of this prohibition are made felonies punishable by imprisonment for not more than five years or a fine of \$10,000.

The Court concluded (*infra*, p. 98):

The penalty provision of the Act \* \* \* manifestly deprives a person convicted of violating the statute, of his constitutional right of freedom of speech and his constitutional right to petition the legislative branch of the Government. This clause is obviously unconstitutional.

Finally, this Court should be advised at the outset that the Government's present argument which seeks to restrict review to the charges of the Information, is being advanced in this Court for the first time. In the District Court, the Government sought to defend the statute only on its face, and as Congress had written it. And it was on its face that the District Court held the Act unconstitutional in its entirety.

### SUMMARY OF ARGUMENT

Under the Criminal Appeals Act this Court's only jurisdiction is to determine the constitutionality of the Lobbying Act on its face. This Court's determination cannot be restricted merely to the constitutionality of specific applications of the Act which are sought to be made by the present Information. Even in the absence of the jurisdictional requirements enjoined upon the Court by the Criminal Appeals Act, the Court would yet be called upon in this case under its own settled pronouncements, to determine constitutionality on the face of the Act. For the Lobbying Act by its very existence and without reference to any particular applications of the pending Information, operates by virtue of its overhanging and pervasive threat of the direst penalties, including the mandatory deprivation of inviolable civil rights, as a direct and very real restraint upon the exercise of rights guaranteed by the First Amendment. But here the Criminal Appeals Act makes it mandatory upon

the Court to consider the constitutionality of the Act upon its face, and the Government in urging the Court to narrow its determination to the specific charges of the Information is by the same token urging the Court unlawfully to transgress the proper boundaries of its statutory jurisdiction.

The first respect in which The Lobbying Act violates the Constitution is through its failure, by reason of its vagueness and ambiguities, to meet the standards of definiteness imposed by the Fifth and Sixth Amendments. A criminal statute, to avoid constitutional infirmity, must be sufficiently clear and definite to be understood by men of ordinary intelligence, and by the juries who are to try them, both in respect of its application and requirements. And where, moreover, a criminal statute such as this sets about to restrict the exercise of First Amendment rights, the requirements of statutory specificity are considerably more exacting than where First Amendment rights are not involved. This is because the very doubts and ambiguities in the statutory language themselves act *in terrorem* to restrain the free exercise, by the persons whom they threaten, of their constitutional liberties.

The Lobbying Act is heavily fraught with highly perplexing ambiguities raising grave doubts as to its applicability and requirements, and since these doubts arise respecting important terms and clauses employed throughout its operative parts, fatal vagueness in any of the respects hereafter pointed out should be sufficient of itself to nullify the Act in its entirety.

As one example, the statutory definition of "lobbying" can convey no ascertainable meaning to a person of ordinary intelligence since its inclusion of "any matter which may be the subject of action by either House" indicates in context that it applies to matters neither pending nor proposed but which may come up for con-

sideration by Congress at some time in the unforeseeable future. Hence one receiving contributions to advance a cause or program not presently pending or proposed in Congress might later find himself to have been in violation of the Act if his legislative prophesies were wrong. Such uncertainties of themselves act as a present restraint upon the free discussion of practically any matter of general interest, for Congress might in the future legislate about anything under the sun. The painful exertions of the Government's brief to say something in defense of this definition, and the frivolous character of what it says, of themselves afford a demonstration that this definition of "legislation" is largely incomprehensible and, since it pervades the Act, renders the statute bad in its entirety.

As a second example of the fatal uncertainties of the statute, the term "to influence, directly or indirectly, the passage or defeat of any legislation" is devoid of meaning, and the District Court so held, and enumerated a number of activities—all beyond the constitutional sphere of Congressional regulation—to which this language might be applied. While the Government erroneously argues that the scope of this Court's review is confined to considering the constitutionality only of the applications of the statute which the Information seeks, and argues further that the Information is limited to charges of soliciting or approaching Congressmen in person, or of urging others to write to their Congressmen about legislation, its descriptions of the Information are squarely belied by the charges of the Information itself. The Information repeatedly charges it to be a violation of the Act merely to attempt to influence a private individual's thinking on legislation, even where no Congressman is approached, or no one is urged to write to his representatives in Congress. Indeed, the Information is largely cast upon the theory that the Act applies to those ef-

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forts to mold public opinion which this Court indicated in *United States v. Rumely*, 345 U.S. 41, 46, 47 would raise serious doubts of constitutionality, and which the Court of Appeals in *Rumely v. United States*, 197 F. 2d 166, flatly declared to be in violation of the First Amendment. The fatal vagueness of the clause "to influence, directly or indirectly" is even worse compounded by its reference to "legislation", which latter term itself is meaninglessly defined, as already pointed out.

As a further instance, the terms "principally to aid", and "principal purpose" are fatally vague and indefinite; and "principal purpose" was condemned by the District Court as an additional ground for holding the statute bad upon its face. Federal and state courts which have construed the word "principal" unanimously agree that its vagueness is such as to nullify any statute or contractual provision in which it may be included. And in attempting to defend this statutory language the contentions of the Government's brief again are of such character as to demonstrate perhaps more strongly than any other consideration herein mentioned the unintelligible nature of the term.

Again by its terms Section 307 fixes the applicability of the "of this title" i.e., the Lobbying Act in its entirety, including every section thereof. It is limited to persons who *receive* money. Section 305 calls for registration and filing by anyone who *receives* or *spends* any money for the purposes referred to in Section 307. We should have thought it obvious that since Section 307 is in terms controlling over all other sections, 305 must be limited to expenditures by those who have already received money as required by 307; and in the District Court we urged dismissal on that additional basis. But the Government takes the position that instead of 305's being subject to 307, the opposite is the case, with the result that the defi-

dition of applicability of the Act in Section 307 is read entirely out of the statute, or at least to the extent that it might operate to govern the application of either Section 305 or 308 or any other section. We do not believe that any man of ordinary intelligence would have thought of such construction, but the fact remains that the enforcement policy of the Justice Department is committed to that construction on the record of the present case. We say that construction is wrong, but if the Department is right this statute must apply not merely to the charges against Harriss but also to every unregistered member of a labor union, every unregistered farmer who belongs to the National Grange, every unregistered contributor to the Red Cross, every unregistered lawyer who belongs to a bar association, and (since *de minimis* is not available, see *infra*, pp. 70-71) any person who spends the price of a telegram or a postage stamp to communicate with his representatives in Congress.

Thus the prosecution against Harriss prefigures the hideous consequences to the American people which may be expected if the Government should here obtain judicial validation of the Act.

There are further numerous ambiguities and contradictions in the statute, and as another instance Section 305 literally requires a person to report *all* receipts and *all* expenditures without limit as to their legislative purposes or any other purposes, and hence it literally, and we think inescapably, calls for the most trivial, the most confidential and irrelevant financial details of a person's life regardless of their relationship to lobbying or legislation; indeed a number of those who have filed, according to Chairman Buchanan, rather than to risk the penalties of the Act, are trying to file that kind of information.

The Lobbying Act, moreover, clearly violates the prohibition of the First Amendment that "Congress shall

make no law \* \* \* abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." These First Amendment freedoms are of equal stature and sanctity and are the most inviolable of all the rights guaranteed under the Constitution. They may be restricted by the Congress only in the event of a clear and present danger of a substantial public evil. The rational relationship between evil and remedy considered adequate to support other legislation is not sufficient in the case of statutes that restrict First Amendment freedoms and here the Court has the duty of determining the necessity for the restrictions sought to be imposed.

Under these principles the Lobbying Act manifestly stands on its face in violation of the prohibitions of the First Amendment.

The Lobbying Act goes too far in restricting First Amendment rights. This the Government does not deny; instead, with whimsical irrelevancy, it devotes many pages of its brief to pointing out what it thinks is covered "*at the least*." Above all else the worst feature of the statute is its restriction of the very efforts to mold and influence public opinion which Judge Prettyman declared unconstitutional in *Rumely v. United States*, 197 F. 2d 166, and concerning which this Court expressed its own serious doubts in affirming his decision on appeal (*United States v. Rumely*, 345 U.S. 41, 46, 47). The language of the Act, its construction by the Congress, by the District Court in the *N.A.M.* decision, by the Buchanan Committee and by the Government in the *Rumely* case, nay by the explicit charges of the present Information, all confirm the application of the statute to any effort to mold the public mind on "any \* \* \* matter which may be the subject of action by either House." The irrelevant contention of the Government, incidentally,

that requesting others to write their Congressmen about legislation was included within this Court's definition in the *Rumely* case of "lobbying" in its commonly accepted sense, is in our opinion advanced without foundation, and scarcely falls short of a perversion of the statement of this Court. And the Government's pretended distinction between advocates of public causes who ask their audiences to write to their Congressmen and those who do not, boils down in its context and upon analysis, to the simple proposition that *all* advocates of public causes, whether or not they ever approach a Congressman themselves, are subject to the Lobbying Act.

The Lobbying Act thus visits with criminal penalties practically every exercise of the freedoms of speech, press and assembly, as well as the right to petition the Government, which the First Amendment guarantees. It makes not the slightest distinction between open, honest and direct activity, on the one hand, and corruption, deceit, and undercover practices, on the other. Nor does it make the slightest distinction between those who solicit Congressmen personally, and those who never approach a Congressman but only seek to influence their neighbors. It applies to all who would exercise their First Amendment rights in connection with legislative matters, without regard to the nature, the magnitude or the triviality of their activities. Since it restricts a multitude of such activities which could not possibly present any clear and present danger to the legislative process, but are, to the contrary, the life's blood of the healthy functioning and even of the ultimate survival of our democratic system, it violates the First Amendment on its face, and this Court should strike it down.

It is no answer to say that this is a mere "disclosure statute" and to pretend that in any event the registration and filing requirements are not especially burdensome. The Government confines its attention to the re-

straints imposed upon those who have already complied, and it carefully eschews all reference to the blighting effect of the criminal penalties upon those persons *who have not* filed. People are repelled from filing both by the oppressive details of the information exacted by the statute, and by the stigma attached in the public mind to the concept of a "registered lobbyist." And having chosen not to file, many people will remain silent on legislative matters in preference to facing the threat of fine, imprisonment, and the mandatory deprivation of First Amendment freedoms which Section 310(b) makes absolute for a period of three years.

Section 310(b) on its face is entirely straightforward in flouting the prohibitions of the First Amendment, since it absolutely prohibits anyone convicted of violating the Act from influencing proposed legislation directly or indirectly, or from testifying before a Congressional committee, for a period of three years, under the penalties of felony, i.e., five years imprisonment and a fine of \$10,000; and for that reason it was stricken down by the District Court. Since it imposes a legislative penalty whose application is mandatory upon conviction of violation of any provision of the Act, the District Court held that it presented another ground for holding the statute bad in its entirety. The Government's contentions here, on the one hand, that this Court *should not decide* but should instead *assume* that it is *unconstitutional*, and then actually decide what would then be the *moot* question of whether it is *severable*, and its alternative argument necessarily based upon the assumption that First Amendment rights can be *licensed* by the Congress, of themselves afford the strongest indication that the decision of the District Court was eminently sound and should be affirmed here.

**ARGUMENT****I. The Lobbying Act Is Unconstitutionally Vague and Indefinite on its Face, and the Dismissal by the District Court on that Ground Was Right and Should be Affirmed.**

It is our position, with which the District Court agreed, that the vagueness and uncertainties of this statute appearing on its face are of an order rendering it unintelligible and impossible of construction, and hence violative of the Fifth and Sixth Amendments to the Constitution. Clearly this Act fails to meet the standards of definiteness which have been laid down by the decisions of this Court. We shall summarize the decisions in which these standards have been prescribed, and then discuss the several provisions of the Act which we contend are unconstitutional for failure to meet these established requirements of definiteness.

**A. This Court's only jurisdiction here under the Criminal Appeals Act is to determine constitutional questions on the face of the statute, and its consideration cannot be restricted to specific applications thereof which are sought in the Information.**

It will be shown that this Court, under the Criminal Appeals Act, has no jurisdiction in the premises to determine the constitutionality of the Lobbying Act except on its face and as Congress has written it. But even in the absence of this statutory bar to its acceptance of the Government's theory, the same result would obtain under this Court's long-established policy of considering only on its face a statute challenged for its restriction of First Amendment freedoms, e.g., *Stromberg v. California*, 283 U.S. 359, 369-370, *Thornhill v. Alabama*, 310 U.S. 88, 99. The Court has likewise applied this doctrine in striking down statutes too indefinite to meet the standards of due

process, as in *Lanzetta v. New Jersey*, 306 U.S. 451, where the Court said at page 453:

If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. Cf. *United States v. Reese*, 92 U.S. 214, 221; *Czarra v. Board of Medical Supervisors*, 25 App. D.C. 443, 453. It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. See *Stromberg v. California*, 283 U.S. 359, 368; *Lovell v. Griffin*, 303 U.S. 444. No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.

But particularly should this rule apply, as this Court has said, where First Amendment freedoms are restricted by the act, and for a very sound reason. Such a statute, which visits with criminal penalties the exercise of First Amendment freedoms, operates by its very existence, and without regard to specific charges of particular violations, as a constant and pervasive threat to obstruct the exercise of rights enjoying the higher protection of the Constitution. The Court stated this principle in *Thornhill v. Alabama*, 310 U.S. 88, 97-98, as follows (*italics added*):

There is a further reason for testing the section on its face. Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. *Schneider v. State*, 308 U.S. 147, 162-165; *Hague v. C.I.O.*, 307 U.S. 496, 516; *Lovell v. Griffin*, 303 U.S. 444, 451. \* \* \* It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. See *Near v. Minnesota*, 293 U.S. 697, 713. One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure



to procure it. *Lovell v. Griffin*, 303 U.S. 444; *Hague v. C.I.O.*, 307 U.S. 496. A like threat is inherent in a penal statute, like that in question here, which does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. \* \* \* *Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression.* *Stromberg v. California*, 283 U.S. 359, 368; *Schneider v. State*, 308 U.S. 147, 155. Compare *Lanzetta v. New Jersey*, 306 U.S. 451.

But here the Government has brought its appeal under the Criminal Appeals Act, 18 U.S.C. §3731, and the principle above stated is that applying even where there is no jurisdictional statute making the application of the principle mandatory on the Court. In cases like the present, which come up for review under the Criminal Appeals Act, this Court, under its own controlling decisions, has no choice other than to consider the question of constitutionality on the face of the statute, and as Congress has written it. This Court does not have jurisdiction under the Criminal Appeals Act to limit its constitutional determination to particular applications of the statute sought to be made in an information filed thereunder. Even if the District Court had declared the Lobbying Act unconstitutional, not on its face, but as sought to be applied by specific charges of the Information, this Court, under the Criminal Appeals Act, could not take jurisdic-

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tion of the appeal, but would have to remand the case to the Court of Appeals. But the District Court having declared the Act unconstitutional on its face, and this regardless of the constitutionality of particular applications sought by the Information, this Court surely does not have jurisdiction now to decide constitutionality on any basis other than that considered by the District Court, namely, the constitutionality of the Lobbying Act on its face and as the Congress has written it.

We should have thought these principles were elementary, but the Government's surprising unfamiliarity therewith is shown by its citation of *United States v. Petrillo*, 332 U.S. 1, (Government brief pp. 82n, 83, 87) as an authority claimed to support its position that the scope of this Court's review of constitutional questions is here restricted to the applications of the statute which the Information seeks. But the *Petrillo* case holds exactly the opposite. In that case the constitutionality of a statute came up for review under the Criminal Appeals Act after the District Court had held it unconstitutional on four grounds. The first two grounds dealt only with the constitutionality of the statute on its face, but the latter two dealt with the constitutionality of applications of the statute sought to be made by the information. This Court held that it had jurisdiction under the Criminal Appeals Act to review the first two questions, for the reason that they raised no more than naked issues of whether the statute was constitutional on its face. But this Court refused to take jurisdiction under the Criminal Appeals Act to review the last two questions for the reason that the constitutional issues had been raised, not by the face of the statute, but only by the applications of the statute which the Government sought to make by the charges of its information. As this Court said at p. 12 (*italics added*):

\* \* \* we refrain from considering any constitutional questions *except those concerning the Act as written*. We do *not* decide whether the allegations of the information, whatever shape they might eventually take, would constitute an application of the statute in such manner as to contravene the First Amendment. *We only pass on the statute on its face* \* \* \*

On page 87 of its brief the Government erroneously cites the following statement from the *Petrillo* case as supporting its position that the Court should not decide the constitutionality of the Lobbying Act on its face, i.e.:

It is our earnest hope that the Court will refuse, once again, "to strike down a statute as violative of \* \* \* constitutional guarantees \* \* \* when the statute has not been, and might never be, applied in such manner as to raise the question [defendants] ask us to decide." *United States v. Petrillo*, 332 U.S. 1, 11.

The enormity of the Government's error may be confirmed by reference to the context in which this statement from the *Petrillo* case was made. From that context it is established that the Court's condemnation was *not* of a proposal to decide constitutionality on the face of the Act, for that is exactly what the Court did in the *Petrillo* case. Quite to the contrary, this condemnation was *of the proposal which the Government is making here*, that the Court determine constitutionality—not on the face of the statute as Congress has written it—but merely as the Government sought to have the statute apply in particular instances under the specific charges of its information.

In fact, the Government's present contention that the constitutionality of the Act must be determined on any narrower basis than from its face, and as Congress has written it, was never urged in the District Court, for there the Government's arguments were all calculated to defend its constitutionality on its face, and without limi-

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tation to any particular manner in which it was sought to be applied in the Information. The contention of its present brief that the Court should limit its consideration to whether the Act is constitutional only as the Information seeks to apply it, actually urges the Court to exceed its proper jurisdiction under the Criminal Appeals Act.

Its position in this regard, as noted heretofore, is the foundation upon which its principal argument is entirely grounded, and since the *Petrillo* decision demolishes that position, the overwhelming bulk of the presentation of its brief is demolished along with it.

Under the *Petrillo* case, therefore, the Court in the present circumstances has jurisdiction under the Criminal Appeals Act only to review the constitutionality of the statute upon its face and as Congress has written it. But there is nothing in the Criminal Appeals Act which obliges the Court to abstain from considering the charges of the present Information as an aid to the exercise of its proper jurisdiction to determine the constitutionality of the statute as it stands. As the construction put upon the statute by the arm of the Government charged with its enforcement, it is entitled, we think, to the Court's consideration in determining whether the statute violates the Constitution on its face. Thus, for example, if it indicates to the Court, as it does to us, that the Justice Department is itself hopelessly confused by the vagueness and ambiguities of the Act, that can be taken into account and accorded its proper weight in deciding whether, in violation of the Fifth Amendment, it fails on its face to afford to men of common intelligence or to juries adequate notice of its applicability and requirements. And if it establishes that the Department is attempting to enforce the statute to cover activities immune from regulation under the First Amendment, that factor can also be considered in determining whether

the statute on its face and by its very existence, acts as a pervasive and continuously overhanging threat, and hence as an unwarranted obstruction, to the free exercise of First Amendment freedoms. As indicating the administrative construction placed upon the Lobbying Act by the Department charged with its enforcement, the Information can freely be resorted to for the limited but important purposes indicated, as a valuable aid to the Court's deliberations. But as any sort of restriction upon the proper scope of this Court's review of the constitutionality of the law upon its face, the Information has no effect whatever and its charges, from that standpoint, are quite irrelevant. It is, of course, only for the first of these two purposes that we refer in this brief to some of the specific charges of the Information. But we desire to emphasize that the Court under the Criminal Appeals Act is without jurisdiction to employ the charges of the Information as blinders, or for the purpose of fencing in, as the Government urges, the scope of its review.

- B. Criminal statutes, to avoid violation of the Fifth and Sixth Amendments, must be sufficiently definite to apprise the laymen of ordinary intelligence who may be subject thereto, whether such statutes apply, and, if so, what things must be done to comply with their terms.**

The test of whether a statute is so vague and indefinite as to render it unconstitutional is not whether a judge or a lawyer might understand what it applies to and what it calls for, although we contend that not even legal minds could, with any prospect of success, attempt to resolve the uncertainties of the statute under discussion. The Congress is obliged, on the contrary, to make its meaning clear to the "man of common intelligence"—the "layman" who will be required to comply with the Act.

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This constitutional requirement of definiteness is so well settled by the repeated pronouncements of this Court that brief reference to only a few of the representative decisions will be made. Thus it has been said that "[i]f the legislature undertakes to define by statute a new offense, and provide for its punishment, it should express its will in language that need not deceive the common mind" (*United States v. Reese*, 92 U.S. 214, 220); that "[l]aws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid" (*United States v. Brewer*, 139 U.S. 278, 288); that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law" (*Connally v. General Construction Co.*, 269 U.S. 385, 391); that "it will not do to hold an average man to the peril of an indictment [under a statute] involving so many factors of varying effect that neither the person to decide in advance nor the jury to try him after the fact can safely and certainly judge the result" (*Cline v. Frink Dairy Co.*, 274 U.S. 445, 465); and that "[t]he legislature could not thus impose upon laymen, at the peril of criminal prosecution, the duty of severing the statutory provisions and of thus resolving important constitutional questions with respect to the scope of a field of regulation as to which even courts are not yet in accord" (*Smith v. Cahoon*, 283 U.S. 553, 564).

In *Winters v. New York*, 333 U.S. 507, 515, the Court said:

The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement. The crime "must be defined with appropriate definiteness." \* \* \* There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess

at the meaning of the enactment. The vagueness may be from uncertainty in regard to persons within the scope of the act \* \* \* or in regard to the applicable tests to ascertain guilt.

The rule was similarly declared in *United States v. Capital Traction Co.*, 34 App. D.C. 592, 598:

In a criminal statute, the elements constituting the offense must be so clearly stated and defined as to reasonably admit of but one construction. \* \* \* The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. \* \* \* The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon one conception of its requirements and the courts upon another.

This decision has been cited with approval in *United States v. Cohen Grocery Co.*, 255 U.S. 81, 92; *Connally v. General Construction Co.*, 269 U.S. 385, 392; *Cline v. Frink Dairy Co.*, 274 U.S. 445, 455, and specifically followed by the Three-Judge Court in the *N.A.M.* decision (*infra*, p. 96).

**C. Criminal statutes restricting First Amendment freedoms must comply with stricter requirements of definiteness than other criminal statutes.**

The Federal Regulation of Lobbying Act concerns itself entirely with the imposition of restrictions upon the right of free speech, of peaceable assembly and to petition for redress of grievances which, save for narrowly limited exceptions, Congress, by the terms of the First

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Amendment\* is expressly forbidden to abridge. Thus the Act falls within the doctrine established by this Court's decisions that criminal statutes limiting First Amendment rights must comply with standards of definiteness even more exacting than those which deal with other matters.

These more stringent requirements of definiteness and certainty, we believe, rest on the soundest reasons of policy. For the more vaguely a criminal statute limiting First Amendment rights is drafted, the more effectively will it operate to discourage those who are apprehensive of incurring its penalties, from exercising their fundamental constitutional freedoms. In this manner, a criminal statute, vague and indefinite in its terms, which restricts the exercise of First Amendment rights, violates not only the Fifth and Sixth Amendments, but through its *in terrorem* effect against all who prudently choose to remain silent rather than hazard the possibility of criminal prosecution, operates to throttle the freedom of expression which the First Amendment was intended to secure.

With these considerations in mind, this Court has stated repeatedly its requirement that statutes penalizing free expression must, to come within the permissible exceptions, state with a considerable higher order of precision and certainty both the scope of their application, and the requirements of compliance.

This Court has often applied the principle just stated in holding statutes restricting First Amendment rights unconstitutionally vague for violation of *both* the First and Fifth Amendments. Thus in *Winters v. New York*, 333 U.S. 507, 509, the Court said:

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\* "Congress shall make no law \* \* \* abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. \* \* \* A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expressions, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press.

Also in *Stromberg v. California*, 283 U.S. 359, 369, it was said:

The maintenance of the opportunity for free political discussion to the end that Government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment.

See also, *Thomas v. Collins*, 323 U.S. 516, 535-536, where the Court observed:

In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle, namely, that workingmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press or free assembly, in any sense of free advocacy of principle or cause.

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And compare the reasoning of the concurring opinion of Mr. Justice Douglas in *United States v. Rumely*, 345 U.S. 41, 48-58.

**D. The Lobbying Act violates the Constitution in numerous respects because the vagueness and uncertainty of its terms render its application and requirements largely incomprehensible to men of common intelligence.**

Even upon a bare perusal of the statute it becomes apparent that it is not limited in its application to "lobbying". Indeed, the term "lobbying" appears in the Act only in the title and in Section 301, which states that:

This title may be cited as the Federal Regulation of Lobbying Act.

Thereafter the Act sets about to impose registration requirements (under penalty, as hereafter shown, of fine, imprisonment and deprivation of First Amendment freedoms) upon those who engage in activities which have never been comprehended in the concept of "lobbying"—as the term is understood in common usage. See *United States v. Rumely*, 345 U.S. 41, 47 for this Court's definition of the term "lobbying" to include only situations in which legislators have been personally approached or solicited.\* But the present statute goes far beyond the personal solicitation of Congressmen and Senators and, as hereafter demonstrated, seeks to impose its restrictions on the expression by practically anyone of his views on any subject of general interest.

By Section 307, entitled "PERSONS TO WHOM APPLICABLE" the Act is declared to apply to "any person" who by himself or through an agent "in any manner

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\* For a consideration of this Court's definition of "lobbying" appearing in the *Rumely* case, see *infra*, pp. 64-67.

whatsoever, *directly or indirectly*, solicits, collects, or receives money or any other thing of value to be used *principally* to aid, or the *principal purpose* of which person is to aid, in the accomplishment of any of the following purposes:

- “(a) The passage or defeat of any *legislation* by the Congress of the United States.
- “(b) To *influence, directly or indirectly* the passage or defeat of any *legislation* by the Congress of the United States.”

In this quotation we have emphasized those terms of this controlling section which we regard as standing most offensively in repugnance to the requirements of definiteness enjoined by the First, Fifth and Sixth Amendments, discussed above.

Section 305 says that “[e]very person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file” the reports enumerated in Section 305. Section 308 provides that “[a]ny person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress \* \* \* shall, before doing anything in furtherance of such object” register therein as provided and file the information which Section 308 calls for; and Section 310 declares (in subsection (a)) that any person who violates any provision of the Act (*scienter* not required) shall be guilty of a misdemeanor, and subject to a fine of not more than \$5,000 or imprisonment for not more than twelve months, or both, while subsection 310(b) prescribes the additional penalty that “any person convicted of the misdemeanor specified [in subsection 310(a)] is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support or opposition to pro-

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posed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment."

We shall consider first the indefiniteness of the terms italicized in the above quotation of section 307, and thereafter we shall point out a number of other respects in which the statute fails, by reason of its vagueness and uncertainties, to comply with the requirements of the Constitution.

- (1) *The term "legislation" as defined in the statute has no ascertainable meaning and hence is violative of the Constitution.*

The term "legislation" is one of the terms specifically defined in the Act, i.e., in Section 302(e), as follows, with italics added:

(e) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, *and includes any other matter which may be the subject of action by either House.*

The constitutional infirmities of this definition hereafter pointed out, necessarily pervade the entire statute, since all of the sections of the Act prescribing its requirements make it necessary that a person shall have done something in relation to "legislation" as thus defined in Section 302(e). Consequently, if the term, as thus defined by Congress, is too broad or too indefinite, it must invalidate the entire statute under the Constitution.

What could have been meant by that portion of the definition which we have emphasized: "and includes any other matter which may be the subject of action by either

House"? The immediately preceding clauses of the definition by their explicit terms apply to all "matters pending or proposed in either House", and the inclusion, by way of addition to such matters "pending or proposed", of "any *other* matter which *may be* the subject of action by either House" unmistakably exhibits the legislative intent to include matters which were at the time of a claimed violation of the Act, *neither* pending nor proposed in Congress. Any other construction, we submit, would nullify an important element of the definition as Congress has written it, and it is the duty of the judicial branch to give meaning to all provisions of the statute in order to avoid such nullification of the statutory language. *Ex Parte Bank*, 278 U.S. 101, *McDonald v. Thompson*, 305 U.S. 263.

What is meant by "any other matter which"—though neither "pending or proposed"—"*may be* the subject of action by either House"? We see no escape from the conclusion that Congress specifically included within this definition matters which, though not presently under consideration or proposed in either House, might become "pending or proposed" at some unstated and indefinite time in the future. It would follow that a person who failed to register might be subjected retroactively to the penalties of the statute if he advocated or opposed a cause with which the Congress was not at that time concerned in any way, but which it might consider a year, five years, or ten years in the future. Certainly such activities would have been with respect to "legislation" as defined in this statute. How can any person who makes a speech on any topic know that this same topic may not at some time in the future become a "subject of action by either House"? Here, it appears to us, is a signal type of the dual repugnance of an indefinite criminal statute to the prohibitions not only of the Fifth and Sixth Amendments, but also of the First Amendment.

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In practical effect the statute, through its employment of this definition of "legislation", confronts all Americans with the alternative of registering under the Act as "lobbyists" on the one hand, or of refraining, on the other hand, under the overpowering threat of fine, imprisonment, and mandatory deprivation of First Amendment freedoms for three years, from addressing their fellow citizens on any subject matter of general interest, where this involves (under Section 305) the receipt or expenditure of *any* money. The definition, we submit, is fatally uncertain, and of itself operates to render the entire statute unconstitutional.

Several decisions of this Court in similar situations support this conclusion. *Connally v. General Const. Co.*, 269 U.S. 385, involved a suit to enjoin enforcement of a state statute which made it a crime for anyone having a contract with the state to pay less than the "current rate of wages in the locality where the work is performed." The Court held that both the terms "current rate of wages" and "locality" were fatally vague, saying (p. 395):

The result is that the application of the law depends not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but *upon the probably varying impressions of juries* as to whether given areas are or are not to be included within particular localities. The constitutional guaranty of due process cannot be allowed to rest upon a support so equivocal. (Italics added.)

Yet the situation here is much worse. For no one can determine with any assurance what matters may at some indefinite time in the future become the subject of Congressional action.

*International Harvester Co. v. Kentucky*, 234 U.S. 216, involved a state antitrust statute which made it *lawful* to combine to fix prices unless the price fixed differed

from the "real value" of the article. "Real value" was defined to be "market value under fair competition, and under normal market conditions." If the price fixed differed from "real value," the combination was subject to criminal penalties. The Court held that the statute violated due process because it would be impossible to determine what *would have been* the normal market value but for the combination and under other conditions that did not exist. The Court said that the standard was too indefinite because it dealt "with an imaginary condition other than the facts" (p. 223). Here, the definition of "legislation" in the Lobbying Act is at least equally objectionable, since it requires persons who may be subject to it, as well as jurors, to speculate and try to imagine whether a particular matter may at some later time become the subject of Congressional action.

It is, of course, impossible for anyone to determine with any degree of certainty what may be the subject of Congressional consideration at some future date. We submit, therefore, that the term "legislation", standing in violation of the Constitution for uncertainty, and pervading, as it does, all operative provisions of the statute, of itself serves to render the Lobbying Act unconstitutional in its entirety.

The Government in its brief, at page 58n, attempts to defend and even further to define this definition of "legislation." It says that the definition offers no difficulties in this case when it is construed in the light of the charges of the Information. But as shown *supra*, pp. 16-20, under the doctrine *United States v. Petrillo*, 332 U.S. 1, this Court has no jurisdiction under the Criminal Appeals Act so to construe it, and is limited to determining whether it is constitutional solely on the face of the Act. Then the Government without support of any authority or rational justification whatever advances the proposition that "the critical phrase, 'which may be the

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subject of action by either House' can be read as referring to 'other matters' which 'are' being considered by Congress, its organs, or its members, or which 'are' being presented at that time *to some member of Congress.*" (Italics added.) We are somewhat in the dark as to the meaning of this, but we can assert that we have been pondering this statutory language for more than five years and that the Government's largely unintelligible construction had never crossed our mind before we read its brief. It seems, however, to argue that anyone who writes or speaks on a matter of general interest must bear the risk of whether someone else may, unbeknownst to him, be talking secretly to some Congressman about it at the moment. Does the Government believe that any layman of common understanding who read the Act would conceive of such a construction? Here, we submit, the Government has presented an argument more compelling than any we have made that the section violates the Fifth Amendment on its face.

- (2) *The statutory terms "to influence directly or indirectly" are fatally indefinite, and become doubly so when combined with the term "legislation".*

As already noted, the statute, in Section 307, states that it shall apply to any person who solicits, collects, or receives money "*to influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.*"

In the *N.A.M.* decision, which the lower Court in the present case (R. 39) declared to be "at least *stare decisis* if not *res adjudicata*," the Three-Judge Court unanimously declared this statutory language to be violative of the Constitution by reason of its vagueness and uncertainty in the following statement (*infra*, p. 96-97):

The clause, "*to influence, directly or indirectly, the passage or defeat of any legislation by the Congress*" is manifestly too indefinite and vague to constitute



an ascertainable standard of guilt. What is meant by influencing the passage or defeat of legislation indirectly? It may be communication with Committees or Members of the Congress; it may be to cause other persons to communicate with Committees or Members of the Congress; it may be to influence public opinion by literature, speeches, advertisements, or other means in respect to matters that might eventually be affected by legislation; it may be to influence others to help formulate public opinion. It may cover any one of a multitude of undefined activities. No one can foretell how far the meaning of this phrase may be carried. No one can determine in advance what activities are comprehended within its scope.

We believe it undeniable that the Act through its employment of this language, is susceptible on its face at least to all the constructions which the Three-Judge Court suggested as possible in the *N.A.M.* decision. Indeed the Government itself in this proceeding has charged these defendants with having done many of the things to which the Three-Judge Court referred, and in addition with other acts that are even more palpably irrelevant to commonly accepted notions of "lobbying". Thus the Three-Judge Court observed that it might be a violation of the terms of this Act to urge third parties to write to their Congressmen. But the Government here carries it a step further and charges the defendant Moore, for example, with violating the Act through having employed A to write letters to X, Y and Z, urging the latter, in their turn, to write to their Congressmen respecting legislation. Specifically, the Government charges in Count I, paragraph 11 (g) (R. 5) that:

(g) On or about February 5, 1948, the defendant Ralph W. Moore, procured one Scott Stevens McCloskey to write letters to Grange officers in the Pacific northwest, urging them to write and wire their Congressmen to put peas in the program for foodstuffs to be sent to Europe under the European Recovery Program.

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How far, as the Court asked in the *N.A.M.* decision, can the application of this clause "to influence, directly or indirectly, the passage or defeat of legislation" be carried? Section 308 specifically exempts from its particular coverage "any person who merely appears before a committee of Congress \* \* \* in support of or opposition to legislation"; but how about a person who engages another to appear before a Congressional Committee? In the next succeeding paragraph of the present Information the Government charges this, in the absence of registration and filing, to constitute a violation of the Act as follows:

(h) The defendant Ralph W. Moore procured one Carl H. Wilken to appear before committees of the Congress of the United States urging the legislative action regarding farm commodities which the defendants desired.

And to the same effect see paragraphs 11(i) and (j) (R. 6) of Count I of the Information.

Suppose A requests B (both are private individuals) to send copies of a document to C (another private individual) and in compliance with this request B employs and pays D to make 25 mimeographed copies of this document for C. Has B, having paid D for this mimeographing of the document sent to C, thereby violated the Act through failure to register and file reports thereunder? The Government so charges in Count V, subparagraph 2(a) of the present Information (R. 11-12) as follows:

2. That \* \* \* the defendant Ralph W. Moore for the purposes of influencing and attempting to influence the aforesaid legislation \* \* \* made the following expenditures:

(a) On or about November 7, 1949, to one C. C. Hanson, at Washington, D. C., in the sum and amount of \$46.21 for the services of said Hanson in mimeographing 25 copies of a document sent to

R. M. Harriss, New York, at the request of the defendant James M. McDonald.

Suppose A employs and pays B to prepare and send out a press release to the National Press Club. Has A violated the Act by failing to register and file a report of this expenditure? The Government in the present Information so charges in Count V, subparagraph 2(c) (R. 12) as follows:

(c) On or about November 20, 1947, to one C. C. Hanson, at Washington, D. C., in the sum and amount of \$33.92 for the services of said Hanson, in preparing and sending out a press release, 50 copies of which said Hanson delivered at the National Press Club.

Under this theory it would seem that the Act would apply to one who engaged another to draft a letter for him on any matter of public concern to be sent to the editor, say, of *The New York Times*. Apparently the Government's theory is that one must now register as a "lobbyist" before communicating with the press in relation to any question of public interest, on the ground that such communications "indirectly influence" "legislation". See also the succeeding paragraphs of this Count of the Information (R. 12-13).

In the case of the defendant Harriss, as is more fully considered hereafter, the Government takes the position that anyone who merely *spends* money to "influence legislation" "directly or indirectly" violates the Act if he fails to register and report thereunder. As shown *infra*, pages 45-47, this would sweep within its ambit practically all of the responsible and civic-minded people of this country, including all dues-paying members of labor unions, farm organizations and bar associations, and not excluding even contributors to the Red Cross.

That the Government further regards this Act as conditioning upon registration and the filing of reports thereunder, the right to mold public opinion by the free

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expression of one's views on public matters is made very clear, for example, by subparagraph 6(d) of Count VIII of the present Information (R. 19), which charges as follows:

(d) On or about November 28, 1949, the defendant James E. McDonald, issued a press release in which he stated, among other things, "Government control of commodities is a dangerous thing."

Thus the present Information is plainly drafted upon the theory that efforts to mold public opinion, even where a Congressman is not approached, or (in flat contradiction of the Government's brief) even where no one is asked to write to a Congressman, constitute a violation of the Act in the absence of registration and filing of reports.

In *Rumely v. United States*, 197 F. 2d 166, Judge Prettyman declared that a statute so construed would violate the Constitution, and on appeal (*United States v. Rumely*, 345 U.S. 41) this Court construed the Congressional Resolution under scrutiny as withholding authority to investigate efforts to mold public opinion, indicating at the same time that serious doubts would arise if the Resolution were as broadly interpreted as the Buchanan Committee had sought to apply it. This Court stated at p. 46:

Surely it cannot be denied that giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of constitutionality in view of the prohibition of the First Amendment. In light of the opinion of Prettyman J., below and of some of the views expressed here, it would not be seemly to maintain that these doubts are fanciful or factitious.

The "views expressed here" were those set forth in the concurring opinion of Justice Douglas, with which Justice Black concurred (at pp. 48-58), and in which, we think, they clearly indicated their position that a measure, such as the present, which would limit or condition the right to mold public opinion, would stand in violation of the First Amendment, e.g., at pp. 56-57:

We have here a publisher who through books and pamphlets seeks to reach the minds and hearts of the American people. \* \* \* The aim of the historic struggle for a free press was "to establish and preserve the right of the English people to full information in respect of the doings or misdoings of their government." \* \* \* That is the tradition behind the First Amendment. Censorship or previous restraint is banned. \* \* \* Discriminatory taxation is outlawed. \* \* \* The privilege of pamphleteering, as well as the more orthodox types of publications, may neither be licensed \* \* \* nor taxed. \* \* \* Door to door distribution is privileged. \* \* \* These are illustrative of the preferred position granted speech and the press by the First Amendment. The command that "Congress shall make no law \* \* \* abridging the freedom of speech, or of the press" has behind it a long history. It expresses the confidence that the safety of society depends on the tolerance of government for hostile as well as friendly criticism, that in a community where men's minds are free, there must be room for the unorthodox as well as the orthodox views.

That "influencing legislation indirectly" covers efforts to mold public opinion, even though members of Congress are not approached, is not merely the theory of the Government as shown by the charges of the present Information above set forth; it was likewise the express view of the Buchanan Committee in seeking to discharge what it regarded as its proper functions under the Congressional authority involved in the *Rumely* case, since that Committee stated in its report (H.R. Rep. No. 3024,\* p. 2,

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\* 81st Cong. 2d Sess.

quoted in the concurring opinion of Justice Douglas in the *Rumely* case (345 U.S. 41, 51)) that:

Our study of this organization indicates very clearly that its most important function is the distribution of books and pamphlets in order to influence legislation directly and indirectly. It attempts to influence legislation directly by sending copies of books, pamphlets, and other printed materials to Members of Congress. It attempts to *influence legislation indirectly* by distributing hundreds of thousands of copies of these printed materials to people throughout the United States. (Italics added.)

For these reasons we believe that the Court in the *N.A.M.* decision (*infra*, p. 96-97) was conservative and altogether realistic in its statement of what might be covered by the clause "*to influence indirectly* the passage or defeat of legislation," and we should think that there could be no disagreement with its observation that:

It may cover any one of a multitude of undefined activities. No one can foretell how far the meaning of this phrase may be carried. No one can determine in advance what activities are comprehended within its scope.

Particularly does this feature of the statute render it bad when it is recalled that the term "legislation" appearing in the same clause, and standing of itself, as already shown, in violation of the Fifth Amendment, serves only to compound and render additionally fatal the vagueness of the "indirect influencing" of "legislation" which the statute would punish as a crime in the absence of compliance with its registration and filing requirements. We therefore regard as inescapable the conclusion of the Court in the *N.A.M.* decision (*infra*, p. 96) that:

The clause, "to influence, directly or indirectly, the passage or defeat of any legislation by the Con-

gress" is manifestly too indefinite and vague to constitute an ascertainable standard of guilt.

- (3) *The terms "to be used principally to aid" and "the principal purpose" appearing in Section 307 are fatally vague and indefinite, and since they govern the applicability of the whole statute, of themselves render it unconstitutional in its entirety.*

Section 307, entitled "PERSONS TO WHOM APPLICABLE" provides, so far as material at this point:

The provisions of this title shall apply to any person . . . who . . . receives money . . . *to be used principally to aid, or the principal purpose of which person is to aid, in . . .*

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

What could Congress have meant by these terms "principally to aid" and "principal purpose"? To have a "principal purpose" must a defendant have only a single purpose, or can he have a number of purposes only one of which is "principal", or, as a third possibility, may he have several principal purposes? And if the defendant has, say, a dozen different purposes, must his legislative purpose account for as much as 51 percent of his activities, and, if so, must the 51 percent be determined in terms of time devoted to that purpose, or in terms of money received from that purpose as compared with the other purposes? Or would it be enough in such case if his legislative purpose represented 12 percent of his activities, and the remaining purposes each represent only 8 percent of his activities? And, equally if not more important, what period of time is to be chosen in determining whether the defendant engages "principally" in legislative activities—should the period be a week, month,

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year, 5 years, or longer? Say the defendant spends the month of October in a particular year entirely in legislative activities, but not any other part of the year; are legislative activities his "principal purpose" as that term is employed by the Lobbying Act?

In addition to the specific determination of the *N.A.M.* decision (*infra*, p. 97) that the terms now being considered render the Act unconstitutional for vagueness, at least one Federal Court and two State Courts have passed upon the question of whether the term "principal" in comparable contexts, is sufficiently definite to convey any ascertainable meaning—whether to a layman or even a court—and they have been unanimous in concluding that it is not.

*Sutton v. Hawkeye Casualty Co.*, 138 F. 2d 781 (C.C.A. 6), involved an insurance policy containing a provision that the automobile covered would "be principally garaged and used" in a certain town. The Court ruled against forfeiture for noncompliance with this clause, on the ground that "principally is a vague, indefinite, uncertain term" (p. 785).

*State v. J. B. Powles & Co.*, 90 Wash. 112, 155 Pac. 774, involved a criminal action under a statute regulating commission merchants, defined as anyone whose "principal business" is the sale of produce for the account of the shipper. The trial court discharged defendant on the ground that "principal" meant "major", and only 25 percent of defendant's business was of this nature. The state Supreme Court held the entire statute bad, saying (90 Wash. 113-115, 155 Pac. 775-776):

The state argued that the word "principal" does not mean "major," as the lower court in discharging the defendant held, but "regular" as distinguished from "casual," and that if this be not the definition of the word, then the definition attempted in the act was repugnant to the rest of it, and should be thrown



out entirely, in consequence of which the defendant should be held as if there were no definition at all.

The definition attempted in the statute is fatally vague. Is the principal part of a business 51 per cent of mere pecuniary receipts? One may do business in which only 49 percent in gross receipts is of the commission sort, and yet in which that sort is the most profitable. When one has total receipts of \$100,000 per annum, the commission part may be but \$20,000, and yet his 10 other kinds of business might bring in less than \$10,000 each. Thus, in both gross and net profits the commission department might bring in less than half of all the others put together, and yet bring in much more than any one. There, in one sense, the chief business would be of a commission kind. Would it, though, be the principal within this statute, when it is the principal only by this kind of comparison? We are unable to say. We cannot hold, as the lower court did, that "principal" means either gross majority in profits or more than half of all the receipts, or that it means more than any other one kind of receipts. Accordingly, upon the mere basis of money, the statutory definition is vague beyond hope. • • •

During how long a period is the test to be applied? Is it the seasonal or the annual receipts that shall control, or is it a view of the man's business during two or three years? Shall a merchant only starting in business and opening a commission department be judged immediately, or shall the state wait a year or two until his status is reasonably established?

This sufficiently answers also the state's attempted definition of the word "principal". We cannot say that this word meant regular rather than casual, for who shall define what is regular or what is casual? Some casual transactions may be of great moment and bring in during a considerable period a large excess of gross receipts.

A similar decision was reached in *State v. Levitan*, 190 Wis. 646, 210 N.W. 111, where the Court held unconstitutionally vague a criminal statute regulating whole-

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sale produce dealers, defined as those selling produce "principally" to others than consumers.

No demonstration more convincing could be offered (save for the *N.A.M.* decision, in which the term as employed in the Lobbying Act itself was held to be fatally indefinite) than is provided by the cases just discussed, that the terms "principally to aid" and "principal purpose" render the present statute bad in its entirety. The ambiguity is even more serious here, since the term "principal purpose" is in the very nature of things a more nebulous standard than "principal business". Comparative volumes of business can be measured by quantitative and monetary standards; but what jury is qualified to guess as to a man's "principal purpose"?

It is significant that the Government has exerted so much effort and ingenuity at pp. 54-58 of its brief to dissuade this Court from even considering the question of whether the term "principal purpose" is fatally indefinite as it appears on the face of the statute. Although Section 307 by its own explicit terms, as well as its title, unquestionably fixes the applicability of the entire Lobbying Act, and makes it a prerequisite to applicability that a person shall have had a "principal purpose" to influence legislation, we find the Government advising the Court on page 54 of its brief that:

Actually \* \* \* the "principal purpose" aspect of Section 307 has little to do with this case.

Next the Court is told that Section 305 is not governed by Section 307, at least insofar as Section 305 relates to expenditures; and Section 307 receives the *coup de grace* on p. 59 where the Court is further informed:

Section 308 does not refer to Section 307 and is not governed by it.

In short, the Government's brief simply seeks to evade the question by affecting, through various techniques of "construction", to deprive the term of any effective statutory significance or operation. Thereafter it again informs the Court in defiance of the principles of review by which this Court is governed under the Criminal Appeals Act, that since this term is *not* sought to be applied by specific charges of the Information, this Court in consequence cannot consider whether it is unconstitutional on its face. But as we have demonstrated (*supra*, pp. 15-20), that position is false and precisely the opposite is true. That the Government should think itself driven to resort to such shifts of sophistry and evasion fairly indicates, we submit, its own conviction that the term "principal purpose" violates the Constitution on the face of the statute.

In the *N.A.M.* decision, *infra*, p. 97, which the lower Court declared to be "*stare decisis* if not *res adjudicata*" of the present case (see R. 39), the Three-Judge Court stated:

The statement found in a prior clause of Section 307 to the effect that its provisions apply to certain persons whose principal purpose is to aid in the accomplishment of the enumerated objectives, is likewise subject to the same criticism.

What is meant by "principal purpose"? Is the term "principal" used as distinguished from "incidental"? May a person have a number of principal purposes? Or is the term used as meaning the "chief" purpose of a person's activities? When does a purpose become principal and when does it cease to be such? The Act contains no definition of that term.

We conclude that Sections 303 to 307, inclusive, are invalid as contravening the due process clause of the Fifth Amendment in failing to define the offense with sufficient precision and to set forth an ascertainable standing of guilt.

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We submit that the conclusion of the Court in the *N.A.M.* decision that the term "principal purpose" is unconstitutionally vague and indefinite, is eminently sound, and should be affirmed.

- (4) *There are other serious ambiguities of an order sufficient of themselves to invalidate the entire statute.*

We shall point out hereunder some other important respects in which the Act is fatally vague and ambiguous.

First we note the apparent conflict between the provisions of Section 307, on the one hand, and Section 305, on the other. Section 307 was included to fix the applicability of the entire statute ("of this title") by defining, according to its title the "PERSONS TO WHOM APPLICABLE". It provides that: "The provisions of this title shall apply to any person \* \* \* who \* \* \* solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid," in accomplishing the purpose "to influence, directly or indirectly, the passage or defeat of any legislation \* \* \*." It is to be emphasized that this Section by its express terms fixes the applicability of *the entire title*, and the title, of course, includes Section 305. Furthermore, it makes applicability dependent upon *principality of purpose*. And it would appear, of necessity, to limit all sections of the title (including, of course, Section 305) to those persons who *receive* money.

But when we turn to Section 305, under which Harriss is charged merely with *spending* (not with *receiving*) money, we find that the latter section provides that "every person receiving any contributions *or* expending any money" to influence legislation directly or indirectly is required to file quarterly reports with the Clerk of the House of Representatives. It was urged on behalf of

Harriss in the District Court that unless the Court is to hold Sections 307 and 305 to stand in irreconcilable conflict with each other, 305 must be construed to refer to expenditures only by persons who in addition have *received* money as required by Section 307. While this construction appears to us quite obvious and inescapable, the point is that the ambiguity of the Act in this regard, as it would confront persons of ordinary intelligence, is strikingly demonstrated by the Government's having prosecuted Harriss merely for having expended money on his own account without charging that he received any money for any purpose. The Government, in short, has proceeded to read an important element of Section 307 out of the Act in order to give a more expansive interpretation to Section 305.

Nor is this the only respect in which these Sections can be construed to contradict each other. Again, Section 305 provides that every person receiving or expending *any* money to influence legislation is required to register and make reports, while Section 307 makes the entire title applicable only to those whose *principal purpose* is to influence legislation. The Government, it will be noted by reference to paragraph 2 of Count IV of the Information (R. 14) has chosen to adopt a hodge-podge construction of Section 307 *vis-a-vis* Section 305; for while (in disregard of the requirement of Section 307 that a person *receive* money) it charges Harriss only with spending money to influence legislation, yet it still retains the requirement of Section 307 of *principal purpose*, i.e., it charges: "That \* \* \* Harriss \* \* \* expended money *principally* to aid in influencing, directly or indirectly, (a) the passage of legislation by the Congress of the United States \* \* \*." The authority, or rational basis, upon which the Government, in order to expand the coverage of this criminal statute, can strike out that portion of Section 307 which it does not like, and at the

same time retain another portion of the same section to which it apparently does not object, is as yet unknown to us. We doubt that it would be apparent to a man of common intelligence.

Now since the Government in its present charges against defendant Harriss takes the position that anyone who spends any money to influence legislation must register under the Act, and since, as shown hereafter (*infra*, pp. 70-71), the statute on its face precludes the application of *de minimis*, it would follow that every businessman belonging to a trade association would have to report the payment of his dues, and every laboring man who, say, donated anything towards the repeal of the Taft-Hartley Act would have to register and file the requisite reports.

The list might be continued endlessly. Labor unions are constantly seeking to influence legislation, and such activities are financed from dues which their members pay in the full knowledge that these funds will be used to finance such activities; consequently if the charges against Harriss were sustained under the Act every union man in the country is likewise under the Act and is overhung with the threat of prosecution. The Red Cross, as is well known, regularly seeks the enactment of federal legislation and hence any contributor to the Red Cross is likewise under the Act and likewise at the mercy of the public prosecutors. And so with the Farmer's Union, the National Grange, and the Farm Bureau Federation, not to mention a host of other organizations whose collective membership includes the majority of the civic-minded, public-spirited and responsible citizens of this country.

Bar associations as a matter of common knowledge regard it not only as their proper function but their public duty to make recommendations to Congress re-

garding the enactment, amendment and repeal of legislation. The activities of these associations are financed by the dues which are paid by their lawyer-members who pay their dues in the knowledge that they will be used in large measure to finance the group activity of influencing legislation. The Bar Association of the District of Columbia, for example, insists upon its right to make recommendations to Congress regarding judicial appointments; and the American Bar Association is constantly advocating to Congress the enactment, amendment and repeal of Federal legislation. As a result it would be hard to find many lawyers in this country to whom the Act would not be applicable under the construction which the Government urges here. And if the Government should prevail in its contention the defendant Harriss is under the Act merely because he allegedly spent money to influence legislation, it would be in a position to contend not only that Harriss's counsel as members of bar associations, but practically every other lawyer in this country is under the Act; as a matter of fact under this construction Government counsel themselves, if they belong to bar associations, are under the Act and delinquent in their failure to report the payment of their dues. If the Government is right everybody is under the Act and we are all under the Act.

Were the Government to prevail against Harriss under its construction of the law it would be in a position to contend that anyone who expended the price of a postage stamp to write to his Congressman, or anyone who paid for a telegram to his Congressman was liable to prosecution for failing to register under the Act. As shown *infra*, pp. 70-71, application of *de minimis* would conflict with the express requirements of statute, but even if the courts should throw out such prosecutions as *de minimis* they would be powerless to prevent their being brought or to protect the people from the expense and

disgrace of their being brought or from the anxiety attendant upon the threat of their being brought.\* The Government in the first instance would have complete autonomy to determine the question of *de minimis insofar as it related to the question of prosecuting or threatening to prosecute*. Is that the autonomy that the Justice lawyers desire and that they are now asking this Court to bestow upon them?

Would the Department's construction be apparent to a man of ordinary intelligence? Let us say that such a man, before making a contribution to an organization engaged in "legislative activities" looks at the Lobbying Act in an effort to determine from its face whether that expenditure will be covered by the Act. At once he notices that Section 307 is entitled "PERSONS TO WHOM APPLICABLE". Upon reading it he finds to his relief that it mentions specifically only persons who "solicit, collect or receive money" and refers to a "principal purpose"—nothing is said about spending money or making contributions. Would he be expected, as a man of common intelligence to assume that Section 307, though by its explicit terms it fixes the applicability "of this title"—of the entire Lobbying Act—actually does nothing of the sort, at least according to the attorneys of the Justice Department who may later prosecute him? That though its definition is in terms confined to persons who *receive* money, yet other sections of the Act which in terms controls operate to nullify and cancel out that

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\* This settled principle was stated by the Three-Judge Court in the *N.A.M.* decision as follows (*infra*, p. 92):

It is a general principle that equity will not enjoin prosecuting officers of the Government from instituting or maintaining criminal prosecutions. Any defense that a person has to a criminal prosecution may be asserted at the trial of the criminal case and will not be adjudicated in advance by a court of equity.

limitation? That its requirement that a person have a "principal purpose" to influence legislation will be obliterated by the administrative construction of the Justice Department? Suppose he reads the legislative history of the Act in order to be very sure that Section 307 means exactly what it says. At 92 Cong. Rec. 10088 he finds the statement of Congressman Dirksen, a sponsor of the bill and a member of the Special Committee, addressing the House as follows (*italics added*):

*The gist of the antilobbying provision is contained in section 307. What this is designed to do is bring about registration, and a statement of receipts and expenditures on the part of a person who is employed for the principal purpose of accomplishing two things. First, the passage or defeat of any legislation by the Congress of the United States; the second is to influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.*

Next he turns to the Senate Report on the Reorganization Act (S. Rep. No. 1400, 79th Cong. 2d Sess.) which is quoted extensively at pp. 31-32 of the Government's brief, and he finds the statement at pp. 26-27 that:

in order that there may be no misunderstanding of the purposes of this title the committee desires to make a statement of what the title does and what it does not do.

Then he continues to read the Committee's description of the "three distinct classes of so-called lobbyists", set forth in the passage quoted in full at pp. 31-32 of the Government's brief, whom the Committee states to be subject to the Act. He concludes that he is *not* one of those who "initiate propaganda from all over the country" particularly since the report says that this class will be required to disclose "*the sources of their collections.*" He intends only to *spend* money, not collect it. Neither, he concludes, does the second category of "those



who are employed to come to the Capitol under the false impression that they exert some powerful influence over members of Congress" apply to him, particularly in view of the statement of the Report that such persons will be required to report "*the amount of their contributions.*" He proceeds to the third and final class of persons covered, and any doubts he may have entertained upon reading the description of "entirely honest and respectable representatives of business, professional and philanthropic organizations who come to <sup>are</sup> Washington openly and frankly to express their views" ~~is~~ dispelled when he reads at the end of the paragraph that they will be required to "*state their compensation.*" He therefore concludes from the fact that the Senate Report announces that these are the three classes of persons subject to the Act, in order, as the Committee further says "that there may be no misunderstanding \* \* \* as to what the title does and what it does not do", that Section 307 can be trusted to mean what it says, and that the Act, in accordance with the explicit provisions of Section 307, is limited to persons who solicit, collect or receive money. Accordingly, he makes his contribution to the organization engaged in "legislative activities", whether the American Medical Association, or the United Mine Workers, or the Daughters of the American Revolution, or the Farm Bureau Federation, or the Red Cross, or whatever; and thereafter, if no luckier than Harriss, he is criminally prosecuted by the Justice Department on charges of having violated the Lobbying Act.

The point is that here is a statute so vague and indefinite that the Congress, through its committees and sponsors of the legislation, interprets it one way, and the Justice Department, charged with its enforcement, interprets it exactly the other way. In this situation is the statute sufficiently definite to be understood by a man of common intelligence? Do men of common intelligence

who try to understand this Act succeed in understanding it? Congressman Halleck, the ranking Republican member of the Buchanan Committee, and now majority leader of the House, informed the House at 96 Cong. Rec. 13887, as follows:

The chairman has said there is no clear definition of "lobbying" and there is none. As a matter of fact, the statute is so indefinite that many, many people do not know when they are in compliance and when they are not. They do not know when to register and when not to register. That is why the work of the committee has been particularly onerous.

A further serious ambiguity of Section 307 might lend color to the Government's thus undertaking to cancel out the words "solicit, collect or receive money", did it not exhibit the vagueness—nay the unintelligibility—of this section to a degree not even heretofore considered. Section 307 refers to "any person \* \* \* who solicits, collects, or receives money \* \* \* to be used principally to aid, *or the principal purpose of which person is to aid,*" in accomplishing the purpose to influence legislation. Putting aside its violation of every known principle of grammatical construction, does this section mean that *a person need not even solicit, collect or receive any money to be subject to the Act*, provided only that he entertains the requisite sentiment or mental resolve or state of mind? While it would appear to us to be absurd to regard the application of the Act as varying with whether the person sought to be covered was *merely thinking* principally about influencing legislation, or principally about something else, yet we can imagine no other construction by which the Government could eliminate from this section the requirement that the person charged with violations shall have solicited, collected or received money.

Since the foregoing was written we have learned, upon receiving the Government's brief, that at p. 55 thereof it

announces its commitment to precisely this construction of the standards of applicability, in the statement that:

The "principal purpose" requirement is worded alternatively. It suffices to bring a person under the Act if either (i) that person's principal purpose is "to influence" federal legislation, or if (ii) that is the principal purpose of the contribution itself, or of the expenditure itself (if the latter is to be included).

This means, as we construe it, that the arm of the Government charged with the enforcement of the Act, now regards it as applying even to persons who have neither "solicited, collected or received" any money to influence legislation, provided only that their sentiments and attitudes of mind are of such a cast as to satisfy the requirement of "principal purpose". How would a jury apply this standard? Do a silent man's unuttered thoughts present a clear and present danger to the country? Does the Government regard it as likely that a man of common intelligence would arrive at that construction of the Act? Under that construction how could the application of the Act ever be known?

A further ambiguity arises when we revert to Section 305 and examine its requirements as to the filing of reports of contributions and expenditures. It will be noted that the reports to be filed of contributions and expenditures are not limited to those made for legislative purposes. On the contrary, the section explicitly requires that a person who receives any contributions or expends any money to influence legislation shall file quarterly reports—not merely of *such* contributions and *such* expenditures—but of *all* of his contributions and *all* of his expenditures. Thus Section 305(a) provides that "[e]very person receiving any contributions or expending any money" for the purpose of accomplishing the purpose to influence legislation directly or indirectly "shall file with the Clerk between the first and tenth day of each calendar quarter,

a statement containing complete as of the day next preceding the date of filing (*italics added*)—

(3) the total sum of *all* contributions made to or for such person during the calendar year;

(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(5) the total sum of *all* expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

We need not catalogue in all their ultimate absurdity the various items of receipts and expenditures of a personal nature, and bearing no relation to legislative activities, which are literally demanded by this section, since such possibilities, we think, will readily suggest themselves to the Court.

This question of whether Section 305 requires a person to report all his contributions and expenditures without limitation to legislative activities is not merely a specter which we have raised here for purposes of argument; it is, on the contrary, a very serious practical problem of administration under this statute, as Congressman Buchanan himself declared to the Congress. His statement is quoted in the concurring opinion of Mr. Justice Douglas in *United States v. Rumely* (345 U.S. 41, 54n) as follows (*with italics ours*):

Pressure groups interpret the Lobbying Act in different ways. Some file expenses. *Others file full budget*, but list expenditures they judge allocable to legislative activities. Still others file only expenditures directly concerned with lobbying. (95 Cong. Rec. 11389)

If this section, in accordance with established canons applicable to the construction of criminal measures, is to be interpreted strictly according to its literal terms, i.e., if it is interpreted to mean that any person who receives or expends any money to influence legislation must file as part of the public records all of his receipts and all of his expenditures regardless of their purpose, then it may be asked by what authority Congress can exact such public disclosure of matters having no discernible relationship to the purposes of the statute or the claimed evils which it was purportedly enacted to remove.

For all the reasons above stated, we submit, this Court should affirm the decision of the District Court that the statute is fatally vague and ambiguous and that, since men of common intelligence could not hope to guess either as to its application or requirements, it violates the due process limitations of the Fifth Amendment to the Constitution.

## **II. The Lobbying Act Violates the Constitution Through Its Abridgement of First Amendment Freedoms.**

### **A. The First Amendment freedoms are of equal stature and sanctity and are the most inviolable of all rights guaranteed under the Constitution.**

The rights of freedom of conscience, of speech, of the press, the right to peaceably assemble, and the right to petition the Government for a redress of grievances are the most sacred and inviolable of all the rights guaranteed by the Constitution to the people of the United States. They are of equal stature and sanctity. They are "cognate" rights. As the Court stated in *Thomas v. Collins*, 323 U.S. 516, 529-530:

The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins.

Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment . . . That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice . . .

For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger \* \* \* Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom of speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights \* \* \* and therefore are united in the First Article's assurance.

The essential nature of the right of free speech is further disclosed in the following:

The freedom of speech and of the press guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. \* \* \* Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.

*Thornhill v. Alabama*, 310 U.S. 88, 101-102.

The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.

*United States v. Cruikshank*, 92 U.S. 542, 552.

Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation and the benefits, advantages, and opportunities to accrue to citizens therefrom.

*Hague v. C.I.O.*, 307 U.S. 496, 513.

In the decisions hereafter considered, the Court was confronted with the protection of one or more of the various freedoms assured by the First Amendment against Congressional abridgment. But since all are cognate and of equal importance, principles asserted with respect to any of these freedoms apply with equal force to all the others.

**B. First Amendment rights may be restricted only in the event of a clear and present danger of a substantial public evil.**

This Court has uniformly held that restriction of First Amendment freedoms is permissible only where necessary to meet a clear and present danger of a substantial public evil. This rule has been adopted as a guide in balancing, on the one hand, the governmental power to protect the public and, on the other, the preservation of the inviolable rights guaranteed to the people by the First Amendment. The government of course has the duty to protect the public against serious dangers. On occasion that protection can be accomplished only through some restriction of the guaranteed freedoms. In that event the courts must determine whether the supposed public evil warrants any limitation of those freedoms and, if so, whether the degree of restriction imposed is really necessary to the elimination of the particular evil. For this purpose, the Court has adopted the so-called "clear and present danger" test. In essence the test is that, before there can be any restriction of civil liberties, there must be (1) a substantial public evil, (2) which is reasonably

probable, and (3) which justifies such invasion of the freedoms as is necessary to avoid the evil.

This rule originated with Justice Holmes in *Schenck v. United States*, 249 U.S. 47, 52, and has been continued down through the Court's last pronouncement on the subject in *Dennis v. United States*, 341 U.S. 494, 510, where the clear and present danger test was said to mean that: "In each case [courts] must ask whether the gravity of the 'evil', discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."

Only a few extracts from this line of decisions will, we believe, be sufficient to show that the vast, indefinite coverage and the onerous and irrational requirements of the present Lobbying Act cannot be justified by resort to the "clear and present danger" rule.

In *Herndon v. Lowry*, 301 U.S. 242, 258 the Court stated:

The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the Legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the Constitution.

The doctrine of "clear and present danger" is further considered in *Thomas v. Collins*, 323 U.S. 516, in which the Court held unconstitutional a Texas statute under which a labor organizer was charged with crime for failure to register before addressing a group of workmen to solicit their membership in a union. At pp. 536-537:

The statements forbidden were not in themselves unlawful, had no tendency to incite to unlawful action, involved no element of clear and present, grave



and immediate danger to the public welfare \* \* \* When legislation or its application can confine labor leaders on such occasions to innocuous and abstract discussion of the virtues of trade unions and so beloud even this with doubt, uncertainty and the risk of penalty, freedom of speech for them will be at an end. A restriction so destructive of the right of public discussion, without greater or more imminent danger to the public interest than existed in this case, is incompatible with the freedoms secured by the First Amendment.

At p. 539:

As a matter of principle a *requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly.* Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is *as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others.* (Italics added.)

And in *Dennis v. United States*, 341 U.S. 494, this Court reaffirmed the application and effect of the "clear and present danger" test. There the Court was considering the constitutionality of the Smith Act (54 Stat. 671) on its face and as applied to persons who advocated overthrow of the Government by force. The Court said that since the statute to some extent restricted speech (at p. 508)—

In this case we are squarely presented with the application of the "clear and present danger" test, and must decide what that phrase imports.

Again it said (at p. 513):

The doctrine that there must be a clear and present danger of a substantive evil that Congress has a right to prevent is a judicial rule to be applied as a matter of law by the courts.

And it gave its definition of the clear and present danger test as follows (at p. 510):

Chief Judge Learned Hand, writing for the majority below, interpreted the phrase as follows: "In each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." \* \* \* We adopt this statement of the rule.

These remarks establish beyond doubt that the clear and present danger rule is still valid and obliges the Court to determine whether the remedy adopted by Congress goes beyond what is necessary to avoid the evil.

**C. The rational relationship between evil and remedy considered adequate to support other legislation is not sufficient in the case of statutes which restrict First Amendment freedoms, and in such instances the court has the duty of determining the necessity for the restrictions imposed.**

Where First Amendment rights are not affected, the Court will uphold a statute if there is any rational relation between an existing evil and the remedy adopted by the legislature. The Court will not assume to determine whether the method selected by the legislature is the best method or even a wise method. The Court will look only to see whether the field regulated is one within the power of Congress, and whether the particular regulation adopted bears any reasonable relation to the exercise of that power.

But when the Court is considering the constitutionality of legislation infringing upon these fundamental First Amendment rights, its function is quite different. The

principles just stated have no application in the case of legislation which restricts First Amendment freedoms, since in such a case the Court must balance the duty of the legislature to protect the public, as against the individual rights secured and guaranteed against Congressional abridgment by the First Amendment. A rational relationship between evil and remedy is then not enough. Mere legislative preferences or beliefs respecting matters of public convenience or public need will not suffice to validate the statute. It is, to the contrary, the duty of the Court to determine whether the legislative remedy goes beyond what is necessary to protect the public against a clear and present danger and hence infringes upon the legitimate exercise of fundamental freedoms. And if the statute has that effect, the Court must strike it down.

This Court has often expressed the difference in the judicial function when statutes restricting First Amendment freedoms come under review. Thus in *Schneider v. State*, 308 U.S. 147, 161, it was said:

In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.

And in *Thomas v. Collins*, 323 U.S. 516, 529-530, the Court said:

\* \* \* The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. \* \* \* Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.

To the same effect, see *Thornhill v. Alabama*, 310 U.S. 88, 95-96; *Board of Education v. Barnette*, 319 U. S. 624, 639-640.

Thus in this case the Court has the duty of determining whether there is a real necessity for this attempted regulation of the First Amendment freedoms.

**D. Application of the foregoing principles makes manifest that the Lobbying Act on its face unconstitutionally abridges First Amendment freedoms.**

The basic evil in this statute is that it goes too far in its restriction of First Amendment freedoms. The problem here is not whether Congress has the power to enact some statute regulating lobbying to some extent. (see *infra*, pp. 72-76) The question is whether the Lobbying Act as Congress has written it is violative of the First Amendment. We do not challenge the power of Congress to regulate lobbying; but we maintain that the statute here clearly goes far beyond what is necessary to meet any clear and present danger of a substantial public evil and by doing so infringes upon the fair and proper exercise of civil rights.

First it is to be remarked that the act sets about to impose its onerous conditions of registration and filing upon legitimate efforts to influence public opinion, even where no member of Congress is solicited or approached. We think this construction of its coverage is indicated of necessity by its application in terms to any persons who have a "principal purpose" to "*influence, directly or indirectly, the passage or defeat of any legislation*" (Section 307(b)) or who receive "any contributions" or expend "any money" for this purpose, —and "legislation," as earlier pointed out, includes (Section 302(e)) by definition any matter which "*may be the subject of action by either House.*" Thus it will be recalled that the Court

in the *N.A.M.* decision (*infra*, p. 96) pointed out that this language of the statute may mean:

to influence public opinion by literature, speeches, advertisements or other means in respect to matters that might eventually be affected by legislation; it may be to influence others to help formulate public opinion.

The decisions in the *Rumely* case show that it was the conviction both of the Buchanan Committee and the legal representatives of the Government in that litigation, which the latter urged upon the courts, that a congressional resolution *deemed by them to be coextensive in its coverage with the present statute*, applied to all undertakings to mold public opinion on matters which were or might be the subject of federal legislation. As the Court of Appeals noted at 197 F. 2d 166, 172-173:

The view of the Buchanan Committee, as reflected in such portions of its hearings as are before us, and that of the prosecutor, the trial court, and the Government in its brief and argument here, is that the publication of books upon national issues is indirect lobbying, that sending books and bulletins to Congressmen is direct lobbying, and that the Buchanan Committee had authority to investigate lobbying, direct and indirect. That is the controversy before us, as we see it.

Again at p. 175:

There is some justification for the argument that the House intended the words "lobbying activities" in its Resolution to encompass the full scope of the Regulation of Lobbying Act. \* \* \* A three-judge statutory court in this jurisdiction \* \* \* has unanimously declared Sections 303 to 307 of the Lobbying Act to be unconstitutional. We have already said enough to indicate that a serious constitutional question would arise if the House Resolution were to be interpreted to include the broad powers claimed for it by the Committee. The Resolution should be interpreted to avoid that doubt.

And at p. 173, the Court of Appeals emphatically declared that any attempt by the Congress to restrict efforts to mold public opinion would be unconstitutional and void, as follows:

That Congress has no power in respect to efforts to influence public opinion rests upon two bases. First, Congress is a representative body. It represents the people, and its power comes from the people. It is not a source or a generator of power; it is a recipient and user of power. As a representative it has no inherent authority to interfere with the thought or wishes of its principal, and the people have not conferred that authority upon their representative, the Congress. So that, even if there were no prohibition such as the First Amendment in the Constitution, Congress would lack authority to abridge either public opinion or efforts to influence that opinion. Second, the First Amendment is a direct prohibition upon the Congress. It reads: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." The Congress cannot legislate concerning "all activities intended to influence, encourage, promote, or retard legislation," or activities designed, in the language of the Buchanan Committee, "to influence legislation indirectly by influencing public opinion." If Congress had authorized its Committee to inquire generally into attempts to influence public opinion upon national affairs by books, pamphlets, and other writings, its authorization would have been void.

This Court, in affirming this decision by the Court of Appeals, not only construed the Resolution in question as excluding from its scope the authority of the Committee to investigate efforts to mold public opinion, but referred with approval to the decision of the Court of Appeals as a ground for its own serious doubts of the power of Congress to enact a measure having such effect (*United States v. Rumely*, 345 U.S. 41, 46):

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Surely it cannot be denied that giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of constitutionality in view of the prohibition of the First Amendment. In light of the opinion of *Prettyman, J.*, below and to some of the views expressed here, it would not be seemly to maintain that these doubts are fanciful or factitious.

And the concurring opinion of Justice Douglas (joined by Justice Black) which the majority also referred to in the passage just quoted, condemns, as we read it, for violation of the First Amendment, all attempts by Congress to restrain or regulate the molding of public opinion through publicity or pamphleteering. All of these pronouncements, we think, point the same way and mean that any measure, such as the Lobbying Act, which attempts to restrict and impose conditions upon the right of private individuals to influence the opinions of their neighbors on public questions, violates the prohibitions of the First Amendment. And any statute regulating "lobbying" would, to avoid violation of the Constitution, or at the very least, grave doubts of constitutionality, have to be limited as indicated by this Court at 343 U.S. 41, 47, as follows:

As a matter of English, the phrase "lobbying activities" readily lends itself to the construction placed upon it below, namely, "lobbying in its commonly accepted sense," that is, "representations made directly to the Congress, its members, or its committees," 90 U.S. App. D.C. 382, 197 F. 2d 166, 175, and does not reach what was in Chairman Buchanan's mind, attempts "to saturate the thinking of the community." 96 Cong. Rec. 13883. \* \* \* So to interpret it is in the candid service of avoiding a serious constitutional doubt.



The Government's brief (pp. 26, 31, 36) contends that the Act applies "*at the very least*" or "at the minimum" (p. 59) to two types of behavior. Inasmuch as the District Court held the Act unconstitutional because it included *too much* in its coverage (R. 39-40, *infra* pp. 96-97), this seems a curious way for the Government to defend its constitutionality—but "*at the very least*", the Government says, the Act does apply to personal contacts with Congressmen and also to persons who persuade others to communicate with their Congressmen about legislation. Its brief, from beginning to end, is replete with this assertion (i.e., at pp. 16, 23-24, 24-25, 28, 33-36, 48, 49, 50, 58 and 81).

As to efforts to influence the public mind on legislative questions which are unaccompanied by a request that members of the audience write to their Congressmen, the Government is not so sure, but its brief entertains the possibility that such activities **might also be covered** by the Act. Thus the possibility is clearly recognized in the footnote on page 16 as follows (*italics added*):

Both the history of the 1946 Act itself, and that of the 1936 progenitors on which it was modelled, show that, *whatever else Congress may have had in mind* [Footnote 7: For example, attempts to "saturate the thinking of the community" or *organized efforts to influence mass public opinion on federal matters*. Cf. *United States v. Rumely*, 345 U.S. 41, 47.] it certainly desired to reach those who seek or sponsor direct communication with Congress and Congressmen.

We maintain that the Act goes far beyond the regulation of "lobbying" in the commonly accepted sense of the word, as defined by this Court in *United States v. Rumely*, 345 U.S. 41, 47. The Government does not disagree, but, as shown, asserts that it applies *at least* to one who urges other persons to write or communicate with their Congressmen with respect to legislation and then goes on to claim that this activity is included within the commonly accepted meaning of "lobbying" as that term is defined in the *Rumely* decision. Indeed, the Government



says (p. 16) that the sponsoring of campaigns asking persons to write to their Congressman with respect to the merits of particular legislation is "the core of the traditional understanding of 'lobbying' see *United States v. Rumely*, 345 U.S. 41, 47, and [was] undoubtedly intended to be covered by \* \* \* the 'Federal Regulation of Lobbying Act'"; and at page 50 it says that these same activities, "as *United States v. Rumely*, 345 U.S. 41, 47 now underlines—are the traditional heart of lobbying and legislative ~~influence~~ <sup>influence</sup>". (Italics added.)

But the *Rumely* case does not hold anything of the sort. This Court in that case clearly indicated at 345 U.S. 41, 47 its acceptance of the definition applied by the Court of Appeals as follows (italics added):

As a matter of English, the phrase "lobbying activities" readily lends itself to the construction placed upon it below, namely, "lobbying in its commonly accepted sense" that is, "representations made directly to the Congress, its members, or its committees", 90 U.S. App. D.C. 382, 197 F. 2d 166, 175, and does not reach what was in Chairman Buchanan's mind, attempts "to saturate the thinking of the community."

Certainly this statement, citing with approval and adopting the definition of the Court of Appeals, could not on its face be construed to include the activities of those who, without personally approaching any Congressmen, urge others to write to them about legislation. Did the Court of Appeals include such activities in its definition of lobbying? Turning to its decision we find that it limited its definition strictly to contacts with, or solicitations of, Congressmen, or in the Court's phrase "buttonholing", and the Government's construction of these definitions to include a situation where Congressmen are not even personally approached is quite imaginative and without justification. Thus, Judge Prettyman defined lobbying in *Rumely v. United States*, 197 F. 2d, 166, 174-175 as follows (italics added):

"Lobbying" is a word of common meaning. The verb "lobby" means, according to the Oxford English Dictionary (1933), "To influence (members of a house of legislature) in the exercise of their legislative functions by frequenting the lobby. Also, to procure the passing of (a measure) *through* Congress by means of such influence." Other dictionaries give similar meanings. The Supreme Court discussed a contract for "lobby service" in *Trist v. Child* and used the term "personal solicitation" as descriptive of it. "A lobbyist", said the Circuit Court in *Burke v. Wood*, "is defined to be one who frequents the lobby or the precincts of a Legislature or other deliberative assembly with the view of influencing the views of its members." \* \* \* Congress was certainly aware of the common meaning of the words "lobbying activities" when it used them in conferring authority upon the Buchanan Committee. *At the most, the words depict no more than representations made directly to the Congress, its members, or its committees.*

At p. 176, he excludes pretty clearly from his definition the sending of communications to Congressmen in the following statement:

Members of Congress need read only that which they want to read. The force behind the writing is the author, not the donor. And, moreover, the wastebasket is an invincible protector against harm by such means. *"Lobbying" by personal contact is a different and more dangerous activity.* (Italics added.)

And at p. 177 he clinches the point that his definition rejects any activities such as merely urging others to write their Congressmen about legislation, which do not involve personal approach to, or personal solicitation of, Congressmen as follows:

If it be true that those who today would influence legislation *turn from the buttonholes of the legislators to the forum of public opinion for support*, a great good in the cause of representative govern-

ment has been done. *The evil to be dealt with is at the buttonhole, not in the arena of political discussion, whether that discussion be oral or written, over the air or on printed pages. These are basic principles of our concept of government. If we ever agree that modern mechanical devices and modern mass interest in public affairs have destroyed the validity of those principles, we will have lost parts of the foundation of the Constitution.* (Italics added.)

The Government, however, is irrevocably committed in its brief to the proposition that in accordance with this Court's decision in the *Rumely* case the activities of those who attempt to influence public thinking, even though excluded from this Court's definition of "lobbying", nevertheless are at the "core"—or the "traditional heart" of the commonly accepted meaning of the term, provided only that they conclude their exhortations with a request that those in the audience impart to their Congressmen their views on legislation.

Certainly nothing in the *Rumely* decision can be cited in support of this contention; it is, we submit, quite repugnant to this Court's definition of "lobbying" in the *Rumely* case; and even worse it strikes us at being at war with ordinary experience and sound sense.

The Government can scarcely be so naive as to honestly believe that anyone ever undertakes to influence public opinion on legislative matters entirely for the moral edification of his audience, or to raise the general cultural level, or to share with others his private utopian dreams, and this with utter indifference to whether his program is ever put into effect. Such a suggestion sounds ridiculous enough, but the Government's apparent distinction between those advocates of legislative programs who request their listeners to write to their Congressmen, and those who do not, with the consequence that the former are unquestionably within the Act, while the latter enjoy

some sort of uncertain status, indicates that the Government is here committed to such a view. What constitutes a request that a person write to his Congressman? Must it be explicit or, if not, is it enough for the speaker to hint, and in such event how strongly must he hint? At all events, what difference does it make when, as must be perfectly obvious to anyone not unacquainted with the most elemental facts of national life, the only purpose of *any* program or campaign to influence public opinion on legislative matters is to stir one's listeners up to bring to bear effectively upon the Congress the massed pressure of the public mind? So what the Government is really arguing here is that the Act applies to *all* efforts to influence public thinking on legislative questions—an area which we think the *Rumely* decision indicates clearly enough is beyond the reach of Congressional control.

Certainly the Government cannot here with good grace deny that the Lobbying Act applies to efforts on the part of private individuals to proselyte their neighbors and mold public opinion on matters of general interest. The contention that both the Act and the Resolution in the *Rumely* case did so apply, as we think sufficiently appears from the extracts just quoted, was one of the mainstay arguments of the Government in that case. Moreover, as has been shown, the statute appears inescapably to apply to such activities on its face and the statutory Three-Judge Court so indicated in the *N.A.M.* decision. (*infra*, at p. 96). And at all events the charges of the present Information against these defendants, accusing them repeatedly of attempting to influence the opinions of private individuals, even where a Congressman was not approached in any manner, surely ought to estop the Government to deny that the statute seeks to invade this forbidden field of legislative action. We think a few portions of this Information deserve quotation at this point.

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We cite these charges only in order to point out their flat contradiction of any possible intimation of the Government's argument that this Act, as Congress has written it, does not attempt to restrict efforts to influence public opinion. And incidentally, they further, and on their face, flatly contradict the repeated asseverations of the Government's brief, that the Information charges nothing more (beyond personal solicitation of Congressmen) than requests by defendants that others write their Congressmen about legislative matters.

Thus the Court will recall that the Government here charges in Count V, subparagraph 2(a) (R. 11-12) as follows:

2. That \* \* \* the defendant Ralph W. Moore for the purpose of influencing and attempting to influence the aforesaid legislation \* \* \* made the following expenditures:

(a) On or about November 7, 1949, to one C. C. Hanson, at Washington, D. C., in the sum and amount of \$46.21 for the services of said Hanson in mimeographing 25 copies of a document sent to R. M. Harriss, New York at the request of the defendant James M. McDonald.

All persons referred to, of course, are private individuals; none is a member of Congress.

Further, as already noted, the Government is in this Information committed on the present record to the position that a person violates the Lobbying Act by failing to report expenditures incurred in conveying his views on public matters—not to the Congress—but to the *press*, i.e., it also charges Moore with failing to report an expenditure (Count V, sub-paragraph 2(c), (R. 12):

(c) On or about November 20, 1947, to one C. C. Hanson, at Washington, D. C., in the sum and amount of \$33.92 for the services of said Hanson, in preparing and sending out a press release, 50 copies of

which said Hanson delivered at the National Press Club.

Finally, we again direct the Court's attention to subparagraph 6(d) of Count VIII of the present information (R. 19) which charges as follows:

(d) On or about November 28, 1949, the defendant James E. McDonald, issued a press release in which he stated, among other things, "Government control of commodities is a dangerous thing."

The Lobbying Act, we submit, since it plainly on its face imposes conditions which restrict the public discussion by the American people of their national concerns—a construction repeatedly reached both by the courts and by the Government—manifestly violates the prohibitions of the First Amendment.

In several other respects the statute goes far beyond what might be necessary to correct the evils of "lobbying." For one thing, activities to influence legislation must be reported no matter how honest and direct they may be; and they must be reported, moreover, regardless of whether the person acts openly and frankly in his own interest or operates covertly and secretly through a concealed agent or in the interest of an undisclosed principal.

Finally, those to whom the statute is applicable must report all money received and expended, under a literal reading of Section 305, for all purposes, legislative or otherwise (see *supra*, pp. 51-53) no matter how small these items of receipts or expenditures may be. Nor can the Government well argue that the monstrous reach of the statute's envelopment is qualified by the *de minimus* rule. In view of the explicit terms of the Act itself, it forecloses any appropriate occasion for application of the *de minimus* doctrine. Section 305(a) says that "[e]very person receiving any contributions or expending any money" for the purposes referred to shall file the state-

ments thereafter enumerated. If Congress had wanted to peg the floor at \$10 or \$100 or \$1000 it could easily have said so, and when it instead said "any money" it presumably meant just that. In any event Congress obviously meant to include sums of considerably less than \$10 because Section 305(a)(4) requires a reporting of detailed information whenever expenditures *aggregating* \$10 or more in one year are made to one person, and Section 305(a)(5) requires that the total of all sums of *lesser* amounts also be reported. In addition, Section 303(a) requires persons receiving contributions to keep a detailed account of all contributions "of any amount or of any value whatsoever." It is thus clear that the statute covers substantially every person engaged in serious pursuits; and that it exacts under penalty of fine, imprisonment and automatic deprivation of civil rights for a three-year period, the most personal, confidential, trivial and irrelevant information from any person who is unable to repress an active interest in the workings of the legislative branch of his Government.

The rule is well established that Congress cannot restrict any exercise of one of the basic freedoms unless such exercise presents a clear and present public danger. And every statute infringing upon those freedoms must be so narrowly drawn as not to result in any restriction which is not necessary to meet that danger. This Act infringes upon practically every exercise of the right to petition as well as upon the freedoms of speech, press and assembly. It visits with criminal penalties the exercise of the right which is perhaps above all others the most precious heritage of the people under the Constitution—the right to speak openly and freely on public questions without previous restraint or registration with functionaries of the Government. Nor are the requirements of the Act in any way limited to cases of corruption, deceit, or undercover practices. Open and direct as well

as secret and indirect influences are admittedly included. The statute requires those to whom it applies to report all exercises of First Amendment freedoms in connection with legislative matters, and this quite without regard to the nature, magnitude, or the triviality, of their activities. In so doing, it manifestly restricts a multitude of such activities which could not possibly present any clear and present danger to the legislative process, but which on the contrary are indispensably essential to the healthy functioning of that process—even to its ultimate survival—in our democratic system. On its face it stands as the most reckless, benighted and thoroughly vicious assault upon the freedoms of speech, of the press, and to petition the Government for a redress of grievances, that has ever emanated from any legislative body—state or federal—since the foundation of the Republic. And on its face, and as Congress has written it, this Court should strike it down.

**E. The question here is not whether Congress has power to regulate lobbying, but only whether the Lobbying Act on its face is unconstitutional.**

There has never arisen in this case any issue of the power of Congress to protect its legislative processes. Thus the Court is not confronted, as the Government appears to urge, with the abstract question of whether, without particular reference to the provisions of the present statute, Congress has the power under the Constitution to regulate "lobbying." Manifestly, the only question before the Court is whether the specific statute under which these defendants are charged violates the Constitution by reason of its vagueness and ambiguities and whether it unlawfully abridges the freedoms protected by the First Amendment. The Government's argument that it is within the constitutional power of Congress to regulate "lobbying", and also its apparent impli-



cations that if this particular statute should be stricken down, Congress will be powerless to control its legislative processes, are quite irrelevant to the questions now pending. For the Court to concern itself with any question of whether under the Constitution Congress can regulate "lobbying" at all would call for an advisory opinion on a matter not now pending before it, and from the earliest period of its existence this Court has consistently and very wisely abstained from rendering advisory opinions. The sole question, may we repeat, is whether the Federal Regulation of Lobbying Act, as that statute now stands before this Court, and as Congress has drafted it, is void for violation of the prohibitions of the Federal Constitution.

At pp. 68-69 of its brief, the Government cites a miscellany of irrelevant statutes apparently to indicate by the road of "analogy" that Congress has power to enact some sort of a statute requiring lobbyists to disclose certain information. There is passing reference to such laws as the Corrupt Practices Act, libel and slander laws, a statute requiring information of holders of second class mailing privileges, the Hatch Act, the Smith Act, the sedition statute, the non-Communist affidavit provision of the Labor Management Relations Act, the National Labor Relations Act, the Foreign Agents Registration Act, and the Sherman Antitrust Act. The short answer is that if the Government seeks thereby to establish as an abstract proposition that Congress, within the limits of the Constitution, has the power to regulate lobbying without regard to the specific provisions of the present law, the Government has given itself a great deal of trouble to establish a proposition that would be universally conceded. Compare the following observation from *Dennis v. United States*, 341 U.S. 494, 501 (italics the Court's):

No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow

the Government by force and violence. The question here is not whether Congress has such *power*, but whether the *means* which it has employed conflict with the First and Fifth Amendments to the Constitution.

We forbear to weary the Court by any minute inspection of this immense parade of unrelated statutes. But the caliber of the parallels may be gauged by examining only a few. The Government, in citing the libel and slander laws (p. 69) exposes its failure to inform itself that these statutes have from the earliest time of our history been recognized as falling within the exceptions to the prohibitions of the First Amendment, e.g., *Chaplinsky v. New Hampshire*, 315 U.S. 568, at 571-572:

There are certain well-defined and narrowly limited classes of speech, the punishment of which has *never* been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the *libelous*, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. (Italics added.)

And with respect to the Government's citation (p. 73) of *Associated Press v. United States*, 326 U. S. 1, in which it was held that newspapers are subject to the antitrust laws, it may be of interest to point out that this same decision was cited to Judge Prettyman in *Rumely v. United States*, 197 F. 2d 166 (affirmed, *United States v. Rumely*, 345 U.S. 41), and that he disposed of it (at p. 177) with the following comment:

Of course the publishers of books are not immune from law. This is the purport of the cases holding publishers and news agencies subject to laws of vari-

ous sorts. [Citing the *Associated Press* case in a footnote] That is not the problem before us. Here the power claimed by the Committee is a power to inquire into the sale of books because those books attempt to influence public opinion. In its opinions dealing with regulations imposed upon the press, the Supreme Court has been most careful to point out that the regulations upheld did not bear upon the freedom of publication except to the extent that ordinary business burdens bear upon the publishing business.

As to the Government's quotation (pp. 72-73) of the dissenting opinion of Mr. Justice Black in *Viereck v. United States*, 318 U.S. 236, 251, one answer, of course, is that a dissenting opinion is not the opinion of this Court. But the conclusive answer is that Mr. Justice Black's views on the registration of agents of alien enemies are one thing, and his views as to Congressional attempts to impose restrictions upon efforts to influence public opinion in violation of the First Amendment, are something else again. For the latter, see the concurring opinion of Mr. Justice Douglas in *United States v. Rumely*, 345 U.S. 41, 48-58, in which Mr. Justice Black concurred, and which is quoted, *supra* at p. 36.

Upon reading this section of the Government's brief we were not a little dismayed to find that the Justice lawyers had thus lumped together indiscriminately, persons under the Lobbying Act and agents of enemy aliens. The sensibilities of Representative Sumner were not so obtuse. In a statement which indicates that she was one of the few members of Congress who had any adequate conception of what it was doing when it enacted this law, she addressed the House during the debate on the bill as follows (92 Cong. Rec. 10091):

Mr. Chairman, in my opinion, *we are violating the Constitution*. It is directly implied in the Constitution that we have no right to intimidate people or to

make any effort to intimidate them so that they cannot petition the Congress. What is this but intimidation? *It is the same sort of curb you put on enemy agents during the war. Registration—do you remember? It is the same sort of curb you put on enemy agents during the war.*

Mr. Chairman, this is not intended to prevent corruption. It would be very simple to put in here language providing for a heavy fine or a heavy jail sentence for anyone who tried to bribe or who offered a job to a Congressman or indulged in any of the ways that are known as corrupt. If that were the intention it would be the easiest thing in the world to insert language in this section. You can see what this is. \* \* \* Mr. Chairman, *the people are going to soon rise up and stop this totalitarian way into which the Government has fallen recently.* (Italics added.)

- F. The statute cannot be defended on the ground that it does not in terms absolutely prohibit the exercise of First Amendment freedoms but requires only a disclosure of information when such freedoms are exercised.

The Government's brief (pp. 65, 67) refers to the Lobbying Act as "a mere disclosure statute" and argues that in consequence it cannot be said unlawfully to abridge First Amendment freedoms. The Government points to the fact that once a person registers and files the requisite information he is free to say what he pleases. But while the Act does not in terms prohibit the exercise of those freedoms, it does impose a definite condition upon their exercise, and it is therefore unconstitutional under the decisions of this Court.

Section 308 provides that anyone who is paid for the purpose of attempting to influence legislation shall "before doing anything in furtherance of such object" register and give detailed information. Section 305 has

the same effect. It provides that the persons covered shall file detailed quarterly statements. Any person to whom the statute is applicable and who does not file such statements has violated the statute and is subject to its severe penalties. Thus a person who desires to engage in the activities covered by the statute has two alternatives—to file, or to forego such activities and not file. But if he exercises his right of free speech or his right to petition Congress, he must file. Obviously, therefore, the filing requirement is a *condition* upon the exercise of First Amendment rights. And as such, it is a *restriction* upon the exercise of those rights.

Apparently it is the Government's view that such a *restriction*, since it falls short of a *prohibition*, is not an abridgment within the terms of the First Amendment. But the Amendment forbids *restrictions* as well as *prohibitions*. There are the following several conclusive answers to the Government's argument:

- (1) *This Court Has Squarely Held That Such Restrictions on First Amendment Rights Are Invalid.*

The recent decision in *Thomas v. Collins*, 323 U.S. 516, completely disposes of the Government's argument. There a Texas statute required all labor organizers to register before soliciting memberships—giving name, union affiliations, and credentials. Upon such registration the Secretary of State was *required* to issue an organizer's card. The Court held that, as applied to one who made a speech to an assemblage of workers during which he invited his listeners generally to join a union, the statute was unconstitutional because its practical effect was to restrict the right to speak in favor of unionism. The state sought to defend the statute on the ground that it "is merely a previous identification requirement" (p. 538) since the Secretary of State could

not refuse a card but *had* to issue it upon registration. The Court held, however, that such an identification requirement was a *restriction* upon freedom of speech and therefore unconstitutional, saying (pp. 539-540, 543, italics added):

*As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assemblies, involving no element of grave and immediate danger to an interest the State is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others. \* \* \**

*If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment. \* \* \**

The restraint is not small when it is considered what was restrained. \* \* \* If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no

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more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty.

The principle was recently restated in *American Communications Assn. v. Douds*, 339 U.S. 382, 402:

\* \* \* the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. Under some circumstances, indirect "discouragements" undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes. A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature.

The principle of these cases is squarely applicable here. It could not be made unlawful for one to speak freely on national questions or openly and frankly to petition Congress for a redress of grievances. Nor can this be accomplished by requiring the filing of statements as a condition to the exercise of that right, and making failure to meet that condition punishable by criminal penalties. If necessary to protection against a clear and present danger, Congress can either condition or prohibit the exercise of these rights. But where no such need exists, Congress can neither condition nor prohibit. Unjustified infringement is not made valid because it is in the form of regulation or restriction or a condition imposed upon the exercise of those rights, rather than outright prohibition. Where no Congressional action is necessary to prevent a clear and present danger, the freedoms are immune from *any* restriction. As said in the *Thomas* case (p. 539), "a requirement of registration \* \* \* would seem generally incompatible with an exercise of the rights." And again (p. 543), "The restraint is not small when it is considered what was restrained."



(2) *The Restriction Here Is Made More Serious by Virtue of the Vagueness of the Statute and the Severity of Its Penalties.*

The extreme vagueness of the statute and the severity of its penalties materially increase its restraint upon the exercise of First Amendment freedoms. By virtue of the vagueness and the ambiguities of the statute above discussed, no person can know whether or not he is engaging in an activity which falls within its terms. If he takes any part in public affairs or expresses his views thereon but fails to file because his guess was wrong, he is subject to a year's imprisonment and a \$5000 fine and, additionally, an automatic mandatory three-year proscription of his most cherished civil liberties. In consequence, one who desires to engage in any activity which a jury might later be persuaded to imagine was somehow related to legislation will respond to this threat by reporting it, however remotely removed it may be from any permissible area of national regulation, and thereby submit to the imposition of an unlawful restraint upon the exercise of his inviolable constitutional rights. And any person, on the other hand, wishing to *avoid* identifying himself as a "lobbyist" and filing the oppressively detailed statements, will scrupulously abstain from any activity which could possibly be associated with legislative matters. The Court anticipated this evil dilemma in *Thomas v. Collins*, 323 U.S. 516, when it held that a statute requiring registration as a condition to issuing a general invitation to join a union was a restriction of free speech, because of the impossibility of distinguishing between such a invitation and a general speech lauding the union. The Court emphasized the withering of free expression that inevitably results from the overhanging threat of criminal prosecution against all who *overstep a shadowy line* (pp. 534-536, italics added):

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That there was restriction upon Thomas' right to speak and the rights of the workers to hear what he had to say, there can be no doubt. The threat of the restraining order, backed by the power of contempt, and of arrest for crime, hung over every word. A speaker in such circumstances could avoid the words "solicit", "invite", "join". It would be impossible to avoid the idea. . . .

Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle, namely, that workmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or *restrains discussion* which is not or may not be invitation. *The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press, or free assembly, in any sense of free advocacy of principle or cause.* The restriction's effect, as applied, in a very practical sense was to prohibit Thomas not only to solicit members and memberships, but also to speak in advocacy of the cause of trade unionism in Texas, without having first procured the card.

The effect of the present statute is quite indistinguishable. No one who has failed to file the necessary statements can feel free to engage in any activity remotely connected with legislation. And persons unwilling to report will, by the same token, feel compelled to abstain from activities in any way related to legislative matters. Thus in a very real and practical sense the statute *prevents* the free exercise of civil rights.

(3) *The Statutory Condition of Registration As a "Lobbyist" Is Uncommonly Well Adapted to Prevent the Exercise of First Amendment Freedoms Because of the Moral Stigma that the Public Mind Attaches to the Term.*

The restraint here is more serious than that held fatal in the *Thomas* case. There the statute demanded identification of individuals as "labor organizers". Here the Act requires those covered to identify themselves publicly as "lobbyists" and to file detailed statements of their finances. It is, we think, a commonplace of observation that to a great number of American people the term "lobbyist" carries inseparable connotations of shady deals, deception, and even of corruption—a condition which did not go unnoticed by those responsible for this legislation. Congressman Dirksen, a member of the Joint Committee on the Organization of Congress which recommended the statute and co-manager of the bill in the House, said on the floor (92 Cong. Rec. 10090):

It is not the desire of the Committee to place upon any citizen a brand that is sometimes regarded as sinister.

On other occasions, Members of Congress have formulated in the most vehement statements the public feeling that "lobbying" is an activity often deeply tainted with crookedness and graft, e.g., from Senate Report No. 342, 70th Cong., 1st Sess., p. 2 (1928):

These associations include fake agricultural associations, fake scientific associations, fake religious associations, fake temperance associations, fake associations in opposition to prohibition, and, in fact, nearly every activity of the human mind has been capitalized by some grafter with "headquarters" established for this activity in Washington. The only activity in fact engaged in is to extract money from credulous people and put it into their own pockets.

And at p. 3:

If these people may be compelled to put their names on record it will then purify the atmosphere their presence pollutes.

Under the Lobbying Act, the most corrupt and sinister lobbying activities and the most public-spirited championship of American ideals are all tarred with the same brush. As stated in Senate Report No. 1400 (79th Cong., 2d Sess., p. 27 and quoted with approval at pp. 31-32 of the Government's brief) the Act was intended to include three types of lobbyists: (1) "Those who do not visit the Capitol but initiate propaganda from all over the country \* \* \*" (2) "\* \* \* those who are employed to come to the Capitol under the false impression that they exert some powerful influence over Members of Congress" and (3) "*\* \* \* entirely honest and respectable representatives of business, professional and philanthropic organizations who come to Washington openly and frankly to express their views for or against legislation \* \* \**" (Italics added.) Thus the Act threatens with fine, imprisonment and mandatory deprivation of First Amendment rights "entirely honest and respectable representatives of business, professional and philanthropic organizations \* \* \* who openly and frankly \* \* \* express their views for or against legislation \* \* \*" unless they acknowledge in a writing filed as a public record (and, as experience under the Act has shown, periodically published in the newspapers) that they are precisely in the same statutory category with "lobbyists" of the most sinister, corrupt, and depraved variety. One may search the required forms of registration and reports in vain for any indication of whether the registrant is a good lobbyist or a bad lobbyist, and the public mind at all events is not highly discriminating.

This is by no means an illusory restraint. Any person, jealous of his good reputation in the community, who might otherwise take an active interest in federal legislation, will long hesitate to do so at the expense of compromising his good name, or at least of having his name recurringly placarded in the newspaper lists along with the rest of the "registered lobbyists". Indeed, persons desirous of petitioning their Congress might well forego that right rather than brand themselves as lobbyists. It is this type of restraint which the First Amendment was designed to prevent. The intendment of that provision is that all persons are to be absolutely free to speak their minds and carry their grievances to their Government. Any legislative action which dissuades persons from the proper exercise of those rights, because of fear of public reproach or otherwise, is a direct abridgment of those rights and therefore unconstitutional.

(4) *The Restriction Here Is Particularly Serious Because of the Expense and Effort Entailed in Preparing the Reports Required by the Statute.*

The statute in the *Thomas* case required only a statement of name, labor union affiliations, and credentials. But here the Lobbying Act imposes reporting requirements incomparably more onerous and oppressive. Section 305 requires quarterly statements showing (1) the name and address of each person who has made a contribution of \$500 or more, (2) the total sum of *all* contributions, (3) the name and address of each person to whom expenditures totaling \$10 or more during the calendar year have been made, and the amount, date and purpose of such expenditures, and (4) the total sum of *all* expenditures. And as already noted (*supra*, pp. 70-71) the reports required are not limited to statements of receipts and expenditures having a relation to legislative activities; a person under the literal language of the section must re-

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port *all* his receipts and *all* his expenditures, without any limitation whatever as to their purpose or their amount. Some registrants have so construed it, and have filed accordingly, as Congressman Buchanan advised the House (see *supra*, p. 52). Further, Section 303 requires persons who receive contributions for legislative purposes to keep detailed accounts of (1) all contributions of any amount, (2) the name and address of each person making any contribution of \$500 or more, (3) all expenditures made, (4) the name and address of every person to whom any expenditure has been made. It also requires that receipted bills be kept showing the particulars of every expenditure exceeding \$10. Paragraphs (1) and (3) of Section 303(a) call for reports of all contributions and all expenditures, without reference or limitation, express or implied, to their having been made for legislative purposes. Section 308 requires registration statements and quarterly reports giving information substantially as detailed as that prescribed by Section 305, although in some respects different in content. It does, however, stand in striking contrast to Sections 305 and 303, in that the reports of receipts and expenditures required under Section 308 are limited to those arising out of legislative activities, thereby confirming the Congressional intention that reports under other sections should *not* be so limited.

The burden imposed by these requirements obviously adds to the weight of the restriction on First Amendment freedoms. A person desiring to publish an article or sponsor a speech having some connection with legislative matters might well refrain from such an exercise of his rights because of the expense and effort involved in filing so detailed a statement. Or one contemplating a visit with, or communication to, his Congressman, in his own self-interest or otherwise, might be deterred by the necessity of filing a statement showing, at the very least,

the cost of a telegram or his transportation costs, or, if the reporting requirements of Section 305 are applied literally according to their plain terms, and without judicially created qualifications, *all* of his receipts and *all* of his expenditures of every kind or character, regardless of their purpose and whether or not related to legislative matters. The seriousness of the restraint is thus aggravated by the consideration that persons will often be dissuaded—indeed persons fully cognizant of the reporting requirements and penalties of the Act would almost invariably be dissuaded—from exercising their First Amendment rights because of the expense and effort entailed in complying with the statute.

**G. By reason of its total deprivation of First Amendment rights for a period of three years, Section 310(b) violates the First Amendment on its face, and the District Court's determination that it is unconstitutional on its face should be affirmed.**

The District Court (R. 39-40) applied to Section 310(b) the ruling of the Three-Judge Court in the *N.A.M.* decision (*infra*, pp. 91-98) that this penalty provision violates the First Amendment on its face, to wit (*infra*, pp. 97-98):

Section 310 of the Act, which relates to penalties, subjects any person who violates the provisions of the Act to a fine of not more than \$5,000, or imprisonment for not more than twelve months, or both. In addition, subsection (b) of Section 310, provides that any person so convicted shall be prohibited for a period of three years from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation, or from appearing before a Committee of the Congress in support of or opposition to proposed legislation. Violations of this prohibition are made felonies punishable by imprisonment for not more than five years or a fine of \$10,000.

Freedom of speech and the right of the people peaceably to assemble and to petition the Government

for redress of grievances are guaranteed by the First Amendment to the Constitution. Congress is prohibited from making any law abridging these rights. The penalty provision of the Act, however, manifestly deprives a person convicted of violating the statute, of his constitutional right of freedom of speech and his constitutional right to petition the legislative branch of the Government. This clause is obviously unconstitutional. A person convicted of a crime may not for that reason be stripped of his constitutional privileges. In principle this provision is no different than would be an enactment depriving a person of the right of counsel, or the right of trial by jury, for a period of three years after conviction. It is inconceivable that anyone would argue in support of the validity of such a provision, and yet, in principle, the penalty clause in this statute is no different. We, therefore, reach the further conclusion that Sections 303 to 307, inclusive, of the statute are unconstitutional in that the penalty attached to their violation is invalid and contravenes the First Amendment to the Constitution.

And in the present case the District Court, applying this ruling of the *N.A.M.* decision, additionally held Section 308 unconstitutional for the same reason (R. 40). Furthermore it declared (R. 39): "The Court does not agree that the separability clause goes far enough to make it possible to cut the penalty clause in two." We cannot see how any other determination would have been possible, and we agree with the Three-Judge Court that "It is inconceivable that anyone would argue in support of the validity of such a provision."

The criticism of this decision appearing at pp. 75-80 of the Government's brief is frivolous to a degree. First, the Government urges this Court, in necessary effect, to refuse to decide whether or not 310(b) is constitutional, but, on the contrary to *assume* that it is *unconstitutional*, and then, proceeding from that assumption, to *decide* that it is *severable*, i.e., at p. 76 the Government says:

In our view, it is not necessary to decide whether Section 310(b) is constitutional. The District Court's holding that Sections 305 and 308 of the Act are invalid because of the penal provisions of Section 310 (b) was clearly wrong in the face of the separability clause \* \* \*

A suggestion so palpably absurd hardly deserves a serious answer. Until the Court decides that Section 310(b) is unconstitutional, the question of whether it is severable is *moot*, and of course this Court, as the Government itself stoutly affirms in other portions of its brief, does not decide moot questions, e.g., at page 81 of its brief:

The Court has repeatedly announced that it does not pass on issues \* \* \* until they inescapably come before it in concrete form \* \* \* the Court [does not render] advisory opinions on hypothetical cases \* \* \*

And the Government's solicitude to avoid any ruling by this Court on the constitutionality of Section 310(b) could only have arisen, we think, from its own conviction that the section is unconstitutional. Indeed, when a statute flatly prohibits the exercise of the very rights whose mere *abridgment* is proscribed by the First Amendment, how could any Court hold otherwise?

It is to be noted that the Government does not even undertake to defend the section on the basis of the clear and present danger principle, nor could it. What clear and present danger is presented by any person's exercising his First Amendment freedoms of free speech and to petition his Government, notwithstanding he has been convicted of violating the Lobbying Act?

As stated, the Government is primarily anxious to stave off any ruling by this Court on the constitutionality of Section 310(b), and to this end it next cites *United States v. Wurzbach*, 280 U.S. 396 for the proposition (p. 77) that, "The contention that a penalty is improper cannot normally be made by one against whom the pen-



alty has not been imposed." The Government seems to say, in other words, that these defendants will have to await being sentenced, and by the same token being automatically deprived of their First Amendment freedoms for a three-year period before they can claim standing even to question the constitutional validity of Section 310(b). But in the *Wurzbach* case the Court only held that, the remainder of a statute being constitutional, the question of uncertainty as to what penalty provision was applicable could await the time when the penalty was to be applied. It has no relevancy here. We do not here attack the penalty as uncertain; we attack it on the same ground that the District Court struck it down; because it stands on its face in violation of the prohibitions of the First Amendment.

It is almost incredible that the Government should characterize Section 310(b), as it does at p. 77 of its brief, as a "minor penalty". Then apparently in support of that assertion it argues at pp. 79-80, in effect, that 310(b) may not be as bad as it sounds, and in any event it is not much worse than some other penalties. At pp. 79-80 it says " \* \* \* the prohibition on appearances before a Congressional committee can *easily be read* as referring to paid appearances on behalf of others and not to appearances in one's own behalf." (Italics added.) "Easily be read" by whom—a man of common intelligence? Nothing in the section even remotely indicates such a construction, and if it can "easily be read" to mean that it can just as easily be read to mean anything else that a lively imagination might suggest. But even as so "read", we do not see that its bald violation of the First Amendment is tempered in any degree.

"So interpreted," the Government continues at p. 80 of its brief,— "So interpreted, Section 310(b) does not appear very different from the temporary suspension of

the professional license of a lawyer, accountant, or doctor for some misconduct or failure to abide by a statutory requirement." Is it then the position of the Government that the constitutional rights of the people to speak freely and to petition their Government are enjoyed only at the sufferance of the legislature, and that these rights may in consequence be licensed by the Congress? See the concurring opinion of Justices Douglas and Black in the *Rumely* case (quoted *supra* at p. 36).

This Court should affirm the holding of the Court below that 310(b) violates the First Amendment on its face and, being unseverable, renders the entire statute unconstitutional.

### CONCLUSION

The District Court's decision was right, and in affirming it this Court should hold the Lobbying Act invalid on its face and as a whole for violation of the Federal Constitution.

Respectfully submitted,

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## APPENDIX

*Opinion of United States District Court for the District of  
Columbia in National Association of Manufacturers  
vs. J. Howard McGrath, March 17, 1952*

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103 F. Sup. 510.

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(Appeal Dismissed Supreme Court No. 174, October 13,  
1952)

Rehearing Denied November 18, 1952)

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Before Wilbur K. Miller, Circuit Judge; Henry A. Schweinhaut and Alexander Holtzoff, District Judges.

Holtzoff, District Judge: This action is brought by the National Association of Manufacturers of the United States and one of its officers against the Attorney General of the United States, to enjoin him from instituting prosecutions against them for violations of the Federal Regulation of Lobbying Act (Act of August 2, 1946, secs. 302-311, 60 Stat. 839; 2 U.S.C.A. secs. 261-270). The basis of the action is twofold: first, that the Act is unconstitutional; and, second, that even if valid, it is not applicable to the plaintiffs.

The Act may be divided into two parts: first, all persons, except political committees, who directly or indirectly solicit, collect, or receive money to be used principally to aid, or whose principal purpose is to aid in the passage or defeat of any legislation by the Congress of the United States; or to influence, directly or indirectly, the passage or defeat of legislation by the Congress of the United States, are required to keep a detailed and exact account of contributions and expendi-

tures with receipted bills, and to file with the Clerk of the House of Representatives quarterly statements listing contributions and expenditures (Secs. 303-307).

The second part of the Act requires persons who engage for pay, or for any consideration, to attempt to influence the passage or defeat of legislation by the Congress of the United States, to register with the Clerk of the House of Representatives and with the Secretary of the Senate, and to file certain quarterly reports (Sec. 308). These two parts of the Act are severable. The second is not involved in this action.

It is a general principle that equity will not enjoin prosecuting officers of the Government from instituting or maintaining criminal prosecutions.<sup>1</sup> Any defense that a person has to a criminal prosecution may be asserted at the trial of the criminal case and will not be adjudicated in advance by a court of equity. For this reason, the Court will not consider the contention that on the factual situation presented by the evidence, consisting of lengthy depositions and voluminous exhibits, the plaintiff Association is not subject to the terms of the statute. This is a defense that must be passed upon, in a criminal proceeding, if a prosecution is instituted.

On the other hand, an exception to the general principle is at times made if it is contended that the statute is unconstitutional and the consequences of a violation may be unusually serious, possibly resulting in irreparable damage.<sup>2</sup> For example, in this case if the statute

<sup>1</sup> *Spielman Motor Co. v. Dodge*, 295 U. S. 89, 95. *Cave v. Rudolph*, 53 App. D. C. 12, 15.

<sup>2</sup> *Dobbins v. Los Angeles*, 195 U. S. 223, 241; *Ex parte Young*, 209 U. S. 123, 163 *et seq.*; *Truax v. Raich*, 239 U. S. 33, 37-39; *Adams v. Tanner*, 244 U. S. 590; *Terrace v. Thompson*, 263 U. S. 197, 214; *Packard v. Banton*, 264 U. S. 140, 143; *Hygrade Provision Co. v. Sherman*, 266 U. S. 497, 500; *Cline v. Frink Dairy Co.*, 274 U. S. 445, 451-2; *Parker v. Brown*, 317 U. S. 341, 349-350; *Hynes v. Grimes Parking Co.*, 337 U. S. 86, 98-100.

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is valid and the Association erroneously determines that it is not subject to its provisions, it may be liable to a penalty, not only of a fine, but of a proscription for a period of three years from attempting to influence directly or indirectly the passage or defeat of any proposed legislation by the Congress. The Court is of the opinion that this case is within the exception insofar as concerns the contention that the pertinent provisions of the statute are unconstitutional. Accordingly the Court will in this action pass upon the validity of these provisions.

The Government has raised the question whether the plaintiffs are in a position to maintain this action on the ground that no prosecution has, as yet, been threatened. A great deal of testimony has been taken on this issue. The Court finds that such a prosecution has, in fact, been threatened, even though the threat has not been made formally.

The vital provision of the pertinent portions of the statute (Sec. 307) makes its requirements applicable to any person who, by himself or through any agent or employee, or other persons, in any manner whatsoever, directly or indirectly, solicits, collects, or receives money to be used principally to aid, or whose principal purpose is to aid, in the passage or defeat of any legislation by the Congress, or to influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States. It is a well established principle that a criminal statute must define the crime with sufficient precision and formulate an ascertainable standard of guilt, in order that any person may be able to determine whether any action, or failure to act, is prohibited. A criminal statute which does not comply with this principle is repugnant to the due process clause and is, therefore, invalid. This is a fundamental principle in our constitutional system, since without it, it would be

possible to punish a person for some action or failure to act not defined in the criminal law and which that person had no way of knowing was forbidden.

For example, in *International Harvester Co. v. Kentucky*, 234 U. S. 216, 221, the Court passed upon the validity of a Kentucky statute, which made certain combinations for the purpose of controlling prices lawful, unless for the purpose or with the effect of fixing a price that was greater or less than the real value of the article. The Court held that the statute offered no standard of conduct and was, therefore, invalid.

In *United States v. Cohen Grocery Co.*, 255 U. S. 81, 89, the Court held unconstitutional an Act of Congress, which made it unlawful for any person wilfully to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessities. This result was reached on the ground that no definite standard of conduct was prescribed by the statute.

In *Connally v. General Const. Co.*, 269 U. S. 385, 391, the Court considered an Oklahoma statute, which provided that all persons employed by or on behalf of the State shall be paid not less than the current rate of per diem wages in the locality where the work is performed. It was held that this statute was repugnant to the due process clause of the Fourteenth Amendment on the ground that the phrase "current rate of wages" and the word "locality" were indefinite and ambiguous. The Court summarized the pertinent principles as follows:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague

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that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

In *Cline v. Frink Dairy Co.*, 274 U. S. 445, 456, the Court struck down a State statute, which declared all combinations to be against public policy, unlawful and void, except those whose object and purpose was to conduct operations at a reasonable profit or to market at a reasonable profit those products which otherwise could not be so marketed. The Court reached the conclusion that this statute involved so many factors of varying effect that one could not decide in advance whether any proposed action on his part would violate it.

In *Champlin Refg. Co. v. Commission*, 286 U. S. 210, 242, the Court held invalid a statute, which prohibited production of crude oil in such manner and under such conditions as to constitute waste. The Court referred to the fact that the general expressions employed were not known to the common law or shown to have any meaning in the oil industry sufficiently definite to enable those familiar with the operation of oil wells to apply them with any reasonable degree of certainty.

In *Lanzetta v. New Jersey*, 306 U. S. 451, the Court had before it a New Jersey statute to the effect that any person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, is declared to be a gangster. The Court held that the words "gang" and "gangster", and the phrase, "known to be a member", were ambiguous and so vague, indefinite, and uncertain as to render the statute repugnant to the due process clause of the Fourteenth Amendment.

In *Winters v. New York*, 333 U. S. 507, a New York statute which punished any one who published, sold, distributed or showed, or had in his possession, with intent

to sell, distribute or show, any printed paper principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust, or crime, was deemed not to meet the required standards and not to contain ascertainable standards of guilt. The Court concluded that the statute was violative of the due process clause of the Fourteenth Amendment.

The Court of Appeals for the District of Columbia in *United States v. Capital Traction Co.*, 34 App. D. C. 592, passed upon a statute imposing penalties on any street railway company in the District of Columbia, that failed to supply and operate a sufficient number of cars, to all persons desirous of the use of said cars, "without crowding said cars". The Court held that the statute was unconstitutional, as the phrase "without crowding" was too uncertain and indefinite to constitute an ascertainable standard of guilt. It pointed out that the dividing line between what is lawful and unlawful may not be left to conjecture.

Applying the foregoing doctrine to the instant case, the conclusion is inescapable that Sections 303 to 307 are invalid. The clause, "to influence, directly or indirectly, the passage or defeat of any legislation by the Congress" is manifestly too indefinite and vague to constitute an ascertainable standard of guilt. What is meant by influencing the passage or defeat of legislation indirectly? It may be communication with Committees or Members of the Congress; it may be to cause other persons to communicate with Committees or Members of the Congress; it may be to influence public opinion by literature, speeches, advertisements, or other means in respect to matters that might eventually be affected by legislation; it may be to influence others to help formulate public opinion. It may cover any one of a multitude of undefined activities. No one can foretell how far the



meaning of this phrase may be carried. No one can determine in advance what activities are comprehended within its scope.

The statement found in a prior clause of Section 307 to the effect that its provisions apply to certain persons whose principal purpose is to aid in the accomplishment of the enumerated objectives, is likewise subject to the same criticism.

What is meant by "principal purpose"? Is the term "principal" used as distinguished from "incidental"? May a person have a number of principal purposes? Or is the term used as meaning the "chief" purpose of a person's activities? When does a purpose become principal and when does it cease to be such? The Act contains no definition of that term.

We conclude that Sections 303 to 307, inclusive, are invalid as contravening the due process clause of the Fifth Amendment in failing to define the offense with sufficient precision and to set forth an ascertainable standard of guilt.

Section 310 of the Act, which relates to penalties, subjects any person who violates the provisions of the Act to a fine of not more than \$5,000, or imprisonment for not more than twelve months, or both. In addition, subsection (b) of Section 310, provides that any person so convicted shall be prohibited for a period of three years from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation, or from appearing before a Committee of Congress in support of or opposition to proposed legislation. Violations of this prohibition are made felonies punishable by imprisonment for not more than five years or a fine of \$10,000.

Freedom of speech and the right of the people peaceably to assemble and to petition the Government for redress of grievances are guaranteed by the First

Amendment to the Constitution. Congress is prohibited from making any law abridging these rights. The penalty provision of the Act, however, manifestly deprives a person convicted of violating the statute, of his constitutional right of freedom of speech and his constitutional right to petition the legislative branch of the Government. This clause is obviously unconstitutional. A person convicted of a crime may not for that reason be stripped of his constitutional privileges. In principle this provision is no different than would be an enactment depriving a person of the right of counsel, or the right of trial by jury, for a period of three years after conviction. It is inconceivable that anyone would argue in support of the validity of such a provision, and yet, in principle, the penalty clause in this statute is no different. We, therefore, reach the further conclusion that Sections 303 to 307, inclusive, of the statute are unconstitutional in that the penalty attached to their violation is invalid and contravenes the First Amendment to the Constitution.

Accordingly, we hold that Sections 303 to 307, inclusive, of the Act are unconstitutional. We regard Section 308 as severable and we, therefore, do not express any opinion as to its validity, because that question is not involved in this litigation.

A permanent injunction against the prosecution of the plaintiffs for violations of any provision of Sections 303 to 307, inclusive, is granted.

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OCT 12 1953

HOLD B. WILLEY, Clerk

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**Supreme Court of the United States**

October term, 1953

No. 32

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**UNITED STATES OF AMERICA, APPELLANT**

**vs.**

**ROBERT M. HARRISS, RALPH W. MOORE, TOM  
LINDER, COMMISSIONER OF AGRICULTURE  
OF GEORGIA, AND NATIONAL FARM  
COMMITTEE, APPELLEES**

---

**APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF COLUMBIA**

---

Brief for Appellee, Tom Linder, Commissioner of Agriculture  
of the State of Georgia

/ Hugh Howell, Connally Bldg., Atlanta, Ga.  
Victor Davidson, Irwinton, Ga.

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# Supreme Court of the United States

October term, 1953

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No. 32

UNITED STATES OF AMERICA, APPELLANT

vs.

ROBERT M. HARRISS,  
RALPH W. MOORE,  
TOM LINDER, COMMISSIONER OF  
AGRICULTURE,  
NATIONAL FARM COMMITTEE  
APPELLEES

---

APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF COLUMBIA

---

Brief for Appellee, Tom Linder, Commissioner of Agriculture  
of the State of Georgia

---

Tom Linder, Commissioner of Agriculture of Georgia, since January 1, 1941, is charged in Count 9 of the Information with violation of Section 308 of the Regulation of Lobbying Act.

District Court Judge Holtzoff held that this section was unconstitutional by reason of the fact that the penalty clause, Section 310 is unconstitutional.

## **The Penalty Denies Freedom of Speech in Violation of the First Amendment.**

The court below was unquestionably right in holding that sub-paragraph (b) of the penalty was in violation of the First Amendment to the Federal Constitution:

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Sub-paragraph (b) of the penalty reads as follows:

"(b) In addition to the penalties provided for in (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or by both such fine and imprisonment."

This is the first time in the history of Congress, insofar as we have been able to find, where that lawmaking body has attempted to punish a criminal offense by abridging the offender's freedom of speech. If it has such power to make such a mandatory penalty for even the smallest technical violation of this law, even where the defendant had never heard of the law before, what is there to prevent it from amending that act and taking this right away for life.

As was said in the case of *National Assn. of Mfrs. v. McGrath*, 103, F. Supp. 510.

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2. . . . A person convicted of a crime may not for that reason be stripped of his constitutional privileges. In principle this provision no different than would be an enactment depriving a person the right of counsel, or the right of trial by jury, for a period of three years. It is inconceivable that anyone would argue in support of the validity of such a provision, and, yet, in principle the penalty clause in this statute is no different . . ."

It is only in extreme cases that a lawmaking body has the right even to regulate or restrict freedom of speech, and the other rights guaranteed by the First Amendment. Mr. Justice Rutledge speaking for the court in *Thomas v. Collins*, 323 U. S. 516, 530-531, in a case involving the rights guaranteed by this amendment, expresses the rule most forcibly:

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger . . . Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights . . . and therefore are united in the First Article's assurance . . ."

The court on pages 539-540 further holds:

"As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly . . . We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment."

In *Thornbill v. Alabama* 310 U. S. 88, 101-102 (Mr. Justice

Murphy) we find:

**"The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times. The Continental Congress in its letter sent to the inhabitants of Quebec (October 26, 1774) referred to the "five great rights" and said: "The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs." Journal of the Continental Congress, 1904, Ed., Vol. I, pp. 104, 108. Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." (Emphasis added.)**

We quote from the opinion of Mr. Justice Roberts in *Herndon v. Lowry* 301 U. S. 242, 258:

**"The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violate the principle of the Constitution."**

*Hague v. C. I. O.* 307 U. S. 496, 513 (Mr. Justice Roberts)

**"Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation and the benefits, advantages, and op-**

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portunities to accrue to citizens therefrom." (Emphasis added.)

Still again in *Bridges v. California*, 314 U. S. 252, 263 (Mr. Justice Black), the court states the rule:

"For the First Amendment does not speak equivocally. It prohibits any law 'abridging the freedom of speech or of the press. It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow'."

Mr. Justice Brandeis in his concurring opinion in *Whitney v. California*, 274 U. S. 357, 377 is often quoted:

**"Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches, and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it . . . In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated."** (Emphasis added.)

The rule **As Applied to the Courts** is well established that where publications criticise the actions of the courts, the First Amendment forbids the punishment by contempt for comment on pending cases in absence of a showing that the utterances created a "clear and present danger to the administration of justice." See *Craig v. Harney* 331 U. S. 367, 372. (Mr. Justice Douglas). We take the following excerpts from page 372 of the opinion:

" . . . The fires which the utterance kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil".

## Similar to Edicts Behind the Iron Curtain

In providing this punishment, Congress apparently fears that the utterances, of a man convicted of a criminal offense, bearing the "attainted" stigma attendant thereto, petitioning congress for relief from the denial of his freedom of speech, or any other grievances inflicted or about to be inflicted upon him in pending bills, would constitute **"a grave and impending danger"**. Hence, the penalty forbids him "from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation . . ." He is thus even denied the right to employ counsel to appear before congress in his behalf. Although Commissioner of Agriculture of Georgia, and required by the laws of Georgia to do the very things he is accused of doing by the information, if convicted, he is forbidden for three years to perform his duties which he owes the State of Georgia as an official by appearing before committees of congress and petitioning congress for redress of the grievances of the farmers of Georgia. Although Editor of the Market Bulletin, the official publication provided by the State of Georgia for his use as Commissioner, he is forbidden to use it in urging congress to enact bills favorable to the farmers of Georgia or to defeat bills injurious to the farmers of Georgia. Although he is an attorney at law, he would be denied the right to appear before committees of congress for relief for his clients. Should he be elected to the United States Senate, an office to which he is known to aspire, the penalty forbids him to attempt "directly or indirectly to influence the passage of any proposed legislation", even though it be his own bills. **No one convicted of the minutest violation of the act is excepted.**

**The Penalty provided is a Bill of Attainder, and a Cruel and Unusual Punishment.**

Paragraph 3 of Section 9, Article 1 of the Constitution of the United States forbids the passage by Congress of Bills of Attainder, and the 8th Amendment forbids cruel and unusual punishments.

Although not shown by the record, and no defense in this case, Mr. Linder had really never heard of this law until he was indicted in 1948, for its violation. If convicted, he will have become **attainted**, for doing the very acts which he had

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been doing for years, and, for which, had he known of the law, he would have thought he was exempted from its provisions by reason of his being Commissioner of Agriculture of Georgia.

The case at bar is in many ways similar to that of *Weems v. United States*, 217 U. S. 349. This case had two penalties for the same offense one of which the court held was a cruel and unusual punishment and reversed the lower court because of it.

### **The Two Penalties Provided in Section 310 Are Not Severable.**

The rule as to severability as applied to a criminal statute is laid down in 59 C. J. 677, Sec. 222:

“ . . . that where a part of the cumulative punishment provided for is invalid, and cannot be imposed, the invalidity carries with it the entire statute ”

Citing *State v. Gravolet* 168 La. 648, 123 Sou. 111.

It will be observed that the general scheme of the entire act is to restrict the exercise of the rights guaranteed under the First Amendment. This general scheme is carried to and emphasized in the penalty. We quote from 59 C. J. 644 (Statutes)

“The whole statute will be declared invalid where the constitutional and unconstitutional provisions are so connected and interdependent in subject matter, meaning and purpose as to preclude the presumption that the legislature would have passed the one without the other . . . ”

Citing, besides other cases, *Poindexter v. Greenhow* 114 U. S. 270, from which we quote from page 306:

“It is undoubtedly true that there may be cases where one part of the statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but these are cases where the parts are so distinctly separable, that each can stand alone, and where the court is able to see and declare, that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail. To hold otherwise would be to substitute for the law intended by the legislature

one they may have never been willing by itself to enact . . .” To the same effect, see *Dorchy v. Kansas* 264, U. S. 286, 290.

The *Weems* case, *supra*, is a leading authority on the separability of penalties and we quote therefrom, pages 281, 282:

“It is suggested that the provision for imprisonment in the Philippine Code is separable from the accessory punishment, and that the latter may be declared illegal, leaving the former to have application . . . This proposition is not applicable to the case at bar. The imprisonment and the accessories were in accordance with the law. They were not in excess of it, but were positively required by it . . . In *re Graham* 138 U. S. 461, it was recognized to be ‘the general rule that a judgment rendered by a court in a criminal case, must conform strictly to the statute, and that any variation from its provisions, either in the character or the extent of the punishment inflicted, renders the judgment absolutely void’. In *ex parte Karstendick*, 93 U. S. 396, 399, it was said: ‘In cases where the statute makes hard labor a part of the punishment, it is imperative upon the court to include that in its sentence.’” . . .

“ . . . The Philippine Code unites the penalties of **cadena temporal**, principal and accessory, and it is not in our power to separate them, even if they are separable, unless their union was not made imperative by the legislature . . .”

#### **Unconstitutionality of Part Destroys Presumption of Constitutionality of Remainder of Act**

We recognize the general principle that all laws are presumed to be constitutional. However, there is another rule which in this case completely destroys this presumption, as to the act in question, which rule we quote from 16 C.J.S. 276:

“It is the rule that when a part of a statute has been declared unconstitutional, the presumption in favor of constitutionality will not be indulged in as to the remaining portion”.

We, therefore urge that as to the act as a whole, and each separate section, when it clearly appears that one of the penalties provided is unconstitutional, there is no longer any presumption that any portion is constitutional. To put it

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mildly, there are several portions of the act which are of doubtful constitutionality, but the general presumption of constitutionality of laws might tip the scales in their favor in some cases. However, when stripped of this protective presumption, their unconstitutionality is clearly apparent.

### **Section 308 Is Unconstitutional**

#### **Because It Is Vague and Indefinite**

Although the court below did not specifically hold the Section 308 was unconstitutionally vague and indefinite, yet, perforce of necessity, this section is dependent on Section 307 to specify the persons to whom Section 308 applies. And, when Section 307 recites: "The provisions of this title shall apply to any person, . . . the principal purpose of which person is to aid" in the passage or defeat of legislation, then Sections 307 and 308 must be construed together. If the term "principal purpose" is vague and indefinite when construed with Section 305, and renders that section unconstitutional, then, in like manner, it is obliged to render Section 308 unconstitutional, for no one can violate Section 308 unless his principal purpose is to aid in the passage or defeat of such legislation or to influence such passage or defeat.

When considered alone, Section 308 is a vague and indefinite and furnishes no ascribable standard of guilt whereby a person can determine what acts are punishable. It forbids "doing anything in furtherance of such objects" until the person registers. This term is so all embracing that it covers every conceivable act, word, or even thought of a person charged with the violation of this law, regardless of whether such action, word or thought is protected by the First Amendment to the Constitution or some other portion of the Constitution.

Again, Section 308 provides that it shall not apply to "any public official acting in his official capacity". Defendant Linder thought that when he was performing the duties which the laws of Georgia require of its Commissioner of Agriculture, and doing the same things that he had been doing for years, he was acting in his official capacity. Public officers, generally, would think that when they were performing duties required by law they would be exempt from this law. The Government thinks different. If the Government is right in its thinking, then the act is a trap for the unwary.



There is, thus, no ascribable standard by which it can be determined what is meant by "principal purpose". Neither is there any ascribable standard of guilt whereby a person can determine what acts are punishable as included in "doing any thing in furtherance of such object", nor is there provided a standard whereby it can be determined when such act is "in furtherance of such object". Still, again, there is no standard provided whereby it can be determined when a person is exempt under the exemption "any public official acting in his official capacity, and when he is not acting in his official capacity. A jury, trying this case, would be called upon to determine what the "principal purpose" of defendant was; whether the acts with which he is charged are punishable; and whether defendant was a "public official acting in his official capacity". With no ascribable standards provided by the law to guide them, the only standard which they could use to determine these matters would be their **enlightened consciences**. As men of common intelligence they would have to guess at the meaning.

In *Winters v. New York* 333 U. S. 507, this Court held invalid a state statute which hinged upon the meaning of the word "principal". the statute penalized the circulation of matter "principally" made up of criminal news, etc. This Court held that the standard of certainty in statutes punishing offenses is higher than in civil statutes and that men of common intelligence cannot be required to guess at the meaning of a penal enactment.

In *Connolly v. General Construction Co.* 269 U. S. 385, 399, this Court condemned a statute so vague "that men of common intelligence must guess at its meaning".

The *Winters* case also held that the vagueness of an act may be "from uncertainty in regard to persons within the scope of the act . . . or in regard to the applicable tests to ascertain guilt".

This Court has also held that: "laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. . . . Before a man can be punished, his case must be plainly and unmistakably within the statute." *U. S. v. Brewer* 139 U. S. 278, 288. Other cases in point are *U. S. v. L. Cohen Groc. Co.* 255 U. S. 81 and *Weeds v. U. S.* 255 U. S. 109.

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Ex Parte Jackson 45 Ark. 158 held that a criminal statute making it a misdemeanor to "commit any act injurious to the public health or public morals or the perversion or obstruction of public justice or the due administration of the law is void for uncertainty".

L. & N. Railroad v. Commonwealth 99 Ky. 132 is another case in point where the statute forbade a railway corporation "to charge, collect or receive more than a just or reasonable rate of toll for the transportation of passengers", and it was held too vague and indefinite.

We submit that section 308 is unconstitutional for the same reasons that the District Court in the case of National Association of Manufacturers of the United States v. J. Howard McGrath held that sections 303 to 307 inclusive were unconstitutional, and for the additional reason that it violates the First Amendment to the Constitution of the United States, by denying freedom of speech, freedom of press, and the right to petition congress for a redress of grievances. The authorities cited relative to Paragraph (b) of Section 310 apply with equal force as to the constitutionality of section 308.

**Justice Requires the Dismissal of the Charge Against Mr. Linder, Whether the Act be Held Constitutional or Unconstitutional.**

Although the court below limited its decision to the questions of whether the act was constitutional, and the separability of the penalties, and these are the only questions before this court, yet, should this Court regard the matter differently from the court below and hold the law constitutional, and the penalties separable, we respectfully urge this Court to examine most carefully the record as to the charges against Mr. Linder, and if our contentions are found correct, to affirm the dismissal by the court below as to him for the reasons hereinafter set forth.

Mr. Justice Brandeis, in the opinion in *Dorchy v. Kansas*, 264 U. S. 286, 289 says:

" . . . This court has power not only to correct errors, in the judgment entered below, but, in the exercise of its appellate jurisdiction, to make such disposition of the case as justice may require . . . "

The record shows that Mr. Linder should never have been prosecuted because the act exempts those acting in an official capacity.

The allegations of the government incorporated in Count IX show that Mr. Linder was the Commissioner of Agriculture of Georgia and was actually performing the duties required of its Commissioner by the Code of Georgia, (a portion of which statutes are set forth in his motion to dismiss), and that the very acts for which he is being prosecuted are those which the Code of Georgia require him to do.

The government admits in paragraph 6 of count 1, (R p 3) incorporated in Count 9 that Linder was apparently acting in his official capacity:

" . . . as to the defendants Tom Linder and James E. McDonald, that the member of Congress would be unaware that they were acting outside and apart from their capacities as state officials instead of making unbiased efforts to further the interests of persons engaged in agricultural pursuits and of other members of the public."

The following are the acts he is alleged to have done:

1. Testified before Committees of Congress.
2. Sent letters and telegrams to members of Congress.
3. Issued press releases which were distributed to Congress by Sou. Com. and Farm Com. Council.
4. Made speeches at functions of these organizations.
5. Organized the Farm Commissioner Council for the purpose of utilizing it in influencing legislation relative to farm commodities.
6. Made a statement before the Senate Committee on Agriculture using material prepared by Dr. Clair opposing legislation tending to reduce prices of farm commodities.
7. Made a speech urging Congress to enact legislation ending OPA.

Georgia Code Section 5-111 requires the Commissioner of Agriculture to

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"Correspond with all bureaus, societies, corporations and organizations having for their purposes the development of the Southern States" . . .

Under Chapter 5-2 of the Code of Georgia, a bureau of Markets was within the Department of Agriculture, the Director to be appointed by the Commissioner, and to work in cooperation with the Commissioner, one of which purposes as set forth in Code Section 5-201 to assist producers in selling their products at fair and reasonable prices.

Georgia Code Section 5-204 provides that among other duties to be performed in cooperation with the Commissioner is the investigation of methods and practices in connection with the production and sale of all agricultural products and all matter relevant thereto, and to disseminate information in such form as he shall deem advisable relating to these matters in all their phases.

Paragraph (e) of this section requires him to "Secure the cooperation of any other organization that may be of assistance therein. Paragraph (f) requires him to "Assist and advise in the organization and conduct of cooperative and other associations in connection with such and all matters relevant thereto.

Under Paragraph (i) he is authorized to take such other measures as shall be proper for carrying out the purposes of the Chapter.

Measured by the foregoing laws of Georgia, each of the 7 acts which he is charged with doing is required or authorized by the laws of Georgia for him to perform.

If these seven acts set forth are all duties of his office and he performed these acts, then he is exempt.

The case of *Isbrandsten-Moller Co. vs. U. S.* 300 U. S. 139, 145, 81 L.E. 562, is conclusive that the facts alleged are sufficient to show that defendant acted in his official capacity.

This was an action for injunction against the enforcement of an order and the District Court of three judges dismissed and the bill for failure to state facts sufficient to constitute a cause of action. On appeal to the United States Supreme Court, the court ruled as follows:

"Despite its recitals of legitimate purpose, the order, so the complaint alleges, sprang from illegal motives, namely, to regulate and stabilize freight rates for the benefit of carriers belonging to steamship conference, to compel appellant to join a conference, and to create a monopoly in trans-oceanic shipping.

"Aside from the principle that if the order is justified by a lawful purpose, it is not rendered illegal by some other motive in the mind of the officer issuing it, the allegations of the complaint are mere conclusions unsupported by any facts pleaded and are, therefore, insufficient."

Other cases in point are:

In *U. S. vs. Reardon, et.c. Co.* 191 Fed. 454, held that to charge that an act is illegal is insufficient and something more must be alleged which the court can see on the face of the indictment is illegal if the facts are proved.

The case of *U. S. v. Van Leuven* 62 F. 62, 66 defines "Official Capacity" as being the capacity in which a person acts because he lawfully performs duties that are of an official character. This case also holds that in order to act in an official capacity, it is not even necessary to be an officer.

67 C.J.S. page 486 defines an official act as follows:

"Any act done by an officer in his official capacity, **under color** and by virtue of his office; an act done under some authority derived from the law or in pursuance of prescribed duties. The term does not have reference merely to the lawful acts of the officer holding the office, but includes all acts done under color and by virtue of the office."

Citing among numerous cases *Tinkoff v. Campbell, D.C. Ill.*, 86 F. Supp. 331, 332.

In addition to the presumption of innocence, there is the presumption that where an officer is charged with the duty of performing certain acts and he performs these official acts, it is presumed that he discharges his duty and performs them as required by law. *Amiston Mfg. Co. v. Davis* 301 U. S. 337; 81 L. E. 1143; 57 S.Ct. 816.

**Officer Cannot Deny That He Acted in His Official Capacity**

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In *People v. Suarez* 25 Puerto Rico 198, it was held that so strong is the presumption that where a duty is imposed on an officer and he apparently acts as such public officer, he cannot avoid the applicability of a statute relative to public officers by claiming he acted as a private citizen. He will not even be heard to deny that he was acting in an official capacity.

These allegations in the Information demand the irrebuttable presumption of law that he was acting in his official capacity.

This case is analogous to that of *Carrington v. United States* 208 U. S. 4, 52 L. E. 367, 368, which involved the same statute as the *Weems* case, *supra*, and involved the indictment of defendant as a **civil officer** when he was serving as a military officer.

From this we quote:

"At this time the plaintiff in error was an officer of the Army on the active list, detached to command a battalion of Philippine scouts, admitted to be a part of the military establishment of the United States . . . what happened was that he received \$3500.00 from civil sources, to be used by him in connection with his military command, in the performance of duties incident to that command . . ."

The court held further:—

" . . . the plaintiff in error was performing no public function of the civil government of the Philippines; he was performing military functions to which the civil government contributed a little money. As a soldier he was not an official of the Philippines, but of the United State . . ."

In *Belcher v. Linn* 65 U. S. 526, 16 L.E. 754, 757, the court held as follows:

"When power or jurisdiction is delegated to any officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are, in general, binding and valid as to the subject matter. The only question which can arise between an individual and the public, or any person, denying their validity are power in the officer and fraud in the party. All other questions

are settled by the decision made or the act done by the tribunal or the officer, whether executive, legislative, judicial, or special, unless an appeal or other revision is provided for by some appellate or supervisory tribunal prescribed by law." (Citing *U. S. v. Arredondo*, 6 Peters 691, *Ranking v. Hoyt* 4 Howard 327; *Stairs v. Peaslee* 18 Howard 524)

In the *Arredondo* case the court held:

"The validity and legality of an act done by the governor of a conquered province depends on the jurisdiction over the subject matter delegated to him by his instruction from the king and the local laws and usages of the colony, when they have been adopted as the rules for its government. If any jurisdiction is given, and not limited, all acts done in its exercise are legal and valid: if there is a discretion conferred, its abuse is a matter between the governor and his government."

The court will recognize the fact that there are certain presumptions of law which are irrebuttable and cannot be contradicted by evidence. This rule rests on grounds of public policy so compelling in character as to override the generally fundamental requirements of law that questions must be resolved according to proof. The evidence of certain kinds of facts is excluded because its admission would injure some other cause more than it would help in the particular case.

An illustration of this is where a Judge sitting on the trial of an enemy, taking secret personal pleasure in passing sentence upon him, is conclusively presumed to be acting in an official capacity when the sentence is inflicted, and the sentence in cannot be attacked on the grounds that the Judge was acting outside his official capacity, merely because he was gratifying revenge at the same time he was doing his official duty. For the law to allow evidence of such would be most preposterous.

The principle of law as to the acts of a public official is similar to that of *Res Judicata*.

If a public official is directed by statute to perform a certain act, and does perform that act, and then claims he performed the act as required by law, there arises an irrebuttable

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presumption that the act was an official one. Where the government admits that Linder is a State official, that he performed certain acts required of him by statute, and Linder swears he performed these acts in his official capacity, the Government is concluded from attacking these acts as unofficial.

In their brief on page 63, in discussing the charge against Mr. Linder, Counsel for the Government concede that the charge is based on a mere inference:

"... the charge is that he had a personal, financial stake outside of his job in such a way as to permit the inference that he was being paid to divide his loyalties between Georgia, on the one hand, and his personal interests, as well as those of Moore and Harriss, on the other."

Again, on pages 55, 56 and 57, in discussing the unconstitutionality of the act caused by the indefinite meaning of "principal purpose", Counsel for the Government says on page 57:

"Where contributions have several purposes, the qualifying word 'principal' may possibly raise problems."


Considering these two quotations together, we construe them as an admission that even the Government Counsel believe that not only is there no basis for the prosecution of Mr. Linder, but that as to him the act is unconstitutional.

Wherefore, we pray that the court affirm the dismissal of the Information as to Mr. Linder, whether on the ground of the unconstitutionality of the act or on the ground that the information shows that this defendant acted in his official capacity.

Respectfully submitted,

  
Hugh Howell,

Atlanta, Ga., Connally Bldg.

  
Victor Davidson,

Irwinton, Ga.

Attorneys for Defendant, Tom Linder,  
Commissioner of Agriculture of Georgia



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HAROLD B. WILEY,

IN THE  
**Supreme Court of the United States**  
October Term, 1953

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No. 32

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UNITED STATES OF AMERICA, *Appellant*

v.

ROBERT M. HARRISS, RALPH W. MOORE, TOM LINDER  
and NATIONAL FARM COMMITTEE

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On Appeal from the United States District Court  
for the District of Columbia

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**STATEMENT FOR APPELLEE RALPH W. MOORE**

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✓ BEN IVAN MELNICOFF

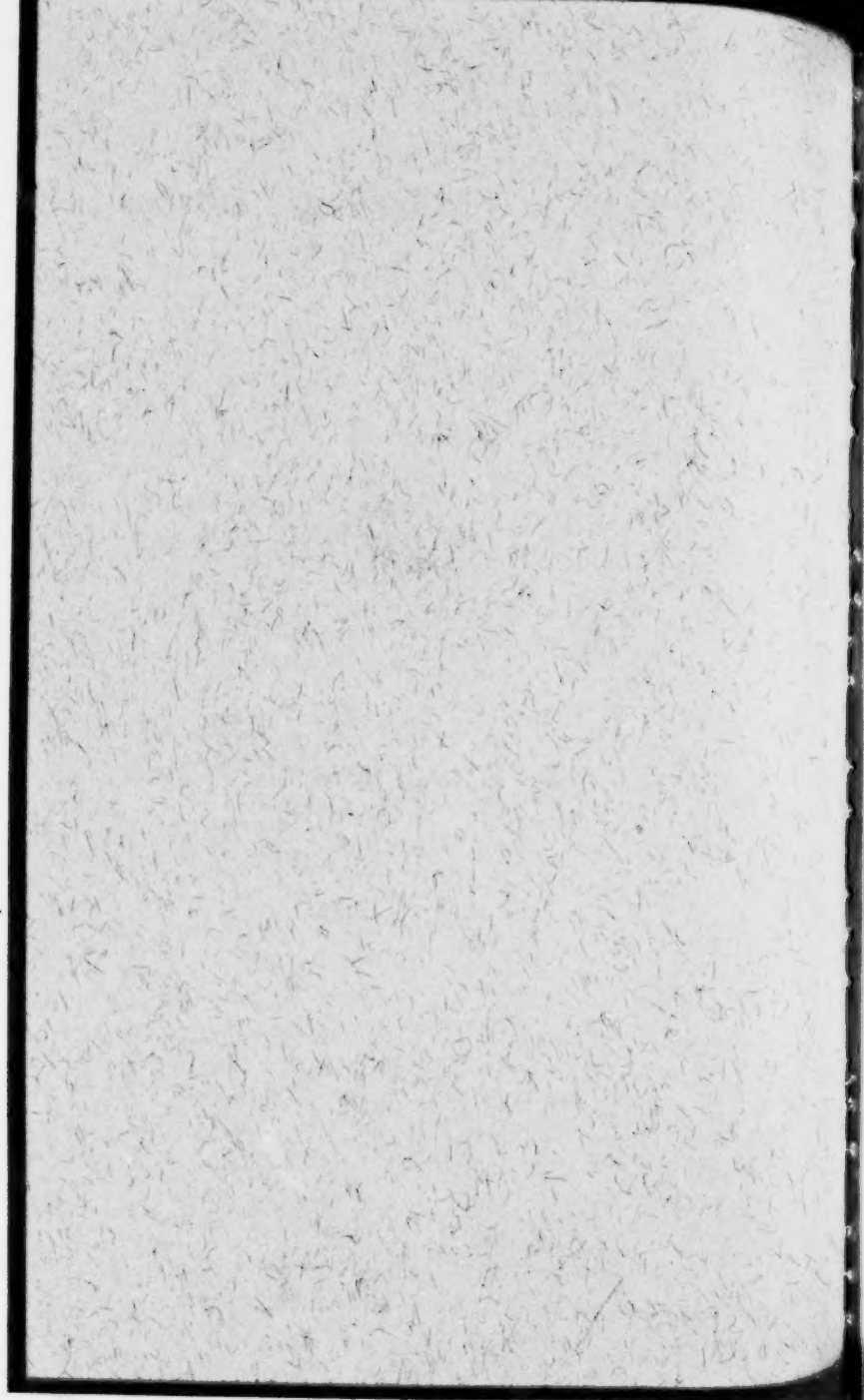
*Attorney for Appellee*

*Ralph W. Moore*

821 Fifteenth Street, N.W.

Washington 5, D. C.





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IN THE  
**Supreme Court of the United States**

October Term, 1953

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No. 32

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UNITED STATES OF AMERICA, *Appellant*

v.

ROBERT M. HARRISS, RALPH W. MOORE, TOM LINDER  
and NATIONAL FARM COMMITTEE

---

**On Appeal from the United States District Court  
for the District of Columbia**

---

**STATEMENT FOR APPELLEE RALPH W. MOORE**

Ralph W. Moore, one of the defendants herein, was charged in the Information with having violated Section 308, in Count I, and Section 305, in Counts II, III, IV, and V, of the Federal Regulation of Lobbying Act, 60 Stat. 812, 839, 2 U. S. C. 260-270. The full text of this Act appears in the Appendix to the Government's brief, at pages 89-95.

The charges against defendant Robert W. Harriss were laid under Section 305 of this Act, and those against defendant Tom Linder, were laid under Section 308 of

this Act. The briefs filed by defendants Harriss and Linder, respectively, adequately consider the respects in which Sections 305 and 308 as well as the penalty provision, Section 310 of the Lobbying Act are deficient, and affirmatively urge the grounds upon which the decision of the court below should be sustained.

Accordingly, defendant Moore adopts the briefs heretofore filed herein by Defendants Harriss and Linder, and joins with these defendants in urging that this Court affirm the decision of the United States District Court for the District of Columbia.

Respectfully submitted,

BEN IVAN MELNICOFF

*Attorney for Appellee*

*Ralph W. Moore*

821 Fifteenth Street, N.W.  
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# SUPREME COURT OF THE UNITED STATES

No. 32.—OCTOBER TERM, 1953.

United States of America, Appellant, v. Robert M. Harriss, Ralph W. Moore, Tom Linder and National Farm Committee.	}	On Appeal From the United States District Court for the District of Columbia.
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[June 7, 1954.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

The appellees were charged by information with violation of the Federal Regulation of Lobbying Act, 60 Stat. 812, 839, 2 U. S. C. §§ 261-270. Relying on its previous decision in *National Association of Manufacturers v. McGrath*, 103 F. Supp. 510, vacated as moot, 344 U. S. 804, the District Court dismissed the information on the ground that the Act is unconstitutional. The case is here on direct appeal under the Criminal Appeals Act, 18 U. S. C. § 3731.

Seven counts of the information are laid under § 305, which requires designated reports to Congress from every person "receiving any contributions or expending any money" for the purpose of influencing the passage or defeat of any legislation by Congress.<sup>1</sup> One such count

<sup>1</sup> Section 305 provides:

"(a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing—

"(1) the name and address of each person who has made a contribution of \$500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain

charges the National Farm Committee, a Texas corporation, with failure to report the solicitation and receipt of contributions to influence the passage of legislation which would cause a rise in the price of agricultural commodities and commodity futures and the defeat of legislation which would cause a decline in those prices. The remaining six counts under § 305 charge defendants Moore and Harriss with failure to report expenditures having the same single purpose. Some of the alleged expenditures consist of the payment of compensation to others to communicate face-to-face with members of Congress, at public functions and committee hearings, concerning legislation affecting agricultural prices; the other alleged

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the name and address of each person who has made any contribution of \$500 or more to such person since the effective date of this title;

"(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

"(3) the total sum of all contributions made to or for such person during the calendar year;

"(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

"(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

"(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

"(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward."

The following are "the purposes designated in subparagraph (a) or (b) of section 307":

"(a) The passage or defeat of any legislation by the Congress of the United States.

"(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."

expenditures relate largely to the costs of a campaign to induce various interested groups and individuals to communicate by letter with members of Congress on such legislation.

The other two counts in the information are laid under § 308, which requires any person "who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation" to register with Congress and to make specified disclosures.<sup>2</sup> These two counts allege in considerable

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<sup>2</sup> Section 308 provides:

"(a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other

detail that defendants Moore and Linder were hired to express certain views to Congress as to agricultural prices or to cause others to do so, for the purpose of attempting to influence the passage of legislation which would cause a rise in the price of agricultural commodities and commodity futures and a defeat of legislation which would cause a decline in such prices; and that pursuant to this undertaking, without having registered as required by § 308, they arranged to have members of Congress contacted on behalf of these views, either directly by their own emissaries or through an artificially stimulated letter campaign.<sup>3</sup>

We are not concerned here with the sufficiency of the information as a criminal pleading. Our review under the Criminal Appeals Act is limited to a decision on the alleged "invalidity" of the statute on which the information is based.<sup>4</sup> In making this decision, we judge the statute on its face. See *United States v. Petrillo*, 332 U. S. 1, 6, 12. The "invalidity" of the Lobbying Act is asserted on three grounds: (1) that §§ 305, 307, and 308 are too vague and indefinite to meet the requirements of due process; (2) that §§ 305 and 308 violate the First Amendment guarantees of freedom of speech, freedom of

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activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

"(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record."

<sup>3</sup> A third count under § 308 was abated on the death of the defendant against whom the charge was made.

<sup>4</sup> 18 U. S. C. § 3731. See *United States v. Petrillo*, 332 U. S. 1, 5. For "The Government's appeal does not open the whole case." *United States v. Borden Co.*, 308 U. S. 188, 193.



the press, and the right to petition the Government; (3) that the penalty provision of § 310 (b) violates the right of the people under the First Amendment to petition the Government.

### I.

The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.<sup>5</sup>

On the other hand, if the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague even though marginal cases could be put where doubts might arise. *United States v. Petrillo*, 332 U. S. 1, 7. Cf. *Jordan v. De George*, 341 U. S. 223, 231. And if this general class of offenses can be made constitutionally definite by a reasonable construction of the statute, this Court is under a duty to give the statute that construction. This was the course adopted in *Screws v. United States*, 325 U. S. 91, upholding the definiteness of the Civil Rights Act.<sup>6</sup>

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<sup>5</sup> See *Jordan v. De George*, 341 U. S. 223, 230-232; Quarles, Some Statutory Construction Problems and Approaches in Criminal Law, 3 Vand. L. Rev. 531, 539-543; Note, 62 Harv. L. Rev. 77.

<sup>6</sup> Cf. *Fox v. Washington*, 236 U. S. 273; *Musser v. Utah*, 333 U. S. 95; *Winters v. New York*, 333 U. S. 507, 510.

This rule as to statutes charged with vagueness is but one aspect of the broader principle that this Court, if fairly possible, must construe congressional enactments so as to avoid a danger of unconstitutionality. *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 407-408; *United States v. Congress of Industrial Organizations*, 335 U. S. 106, 120-121; *United States v. Rumely*, 345 U. S. 41, 47. Thus, in the *C. I. O.* case, *supra*, this Court held that expenditures by a labor organization for the publication of a weekly periodical urging support for a certain candidate in a forthcoming congressional

The same course is appropriate here. The key section of the Lobbying Act is § 307, entitled "Persons to Whom Applicable." Section 307 provides:

"The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

"(a) The passage or defeat of any legislation by the Congress of the United States.

"(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States."

This section modifies the substantive provisions of the Act, including § 305 and § 308. In other words, unless a "person" falls within the category established by § 307, the disclosure requirements of § 305 and § 308 are inapplicable.<sup>7</sup> Thus coverage under the Act is limited to those persons (except for the specified political committees)

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election were not forbidden by the Federal Corrupt Practices Act, which makes it unlawful for ". . . any labor organization to make a contribution or expenditure in connection with any [congressional] election. . . ." Similarly, in the *Rumely* case, *supra*, this Court construed a House Resolution authorizing investigation of "all lobbying activities intended to influence, encourage, promote, or retard legislation" to cover only "lobbying in its commonly accepted sense," that is, "representations made directly to the Congress, its members, or its committees."

<sup>7</sup> Section 302 (c) defines the term "person" as including "an individual, partnership, committee, association, corporation, and any other organization or group of persons."

who solicit, collect, or receive contributions of money or other thing of value, and then only if the principal purpose of either the persons or the contributions is to aid in the accomplishment of the aims set forth in § 307 (a) and (b). In any event, the solicitation, collection, or receipt of money or other thing of value is a prerequisite to coverage under the Act.

The Government urges a much broader construction—namely, that under § 305 a person must report his expenditures to influence legislation even though he does not solicit, collect, or receive contributions as provided in § 307.<sup>8</sup> Such a construction, we believe, would do violence to the title and language of § 307 as well as its legislative history.<sup>9</sup> If the construction urged by the Government is to become law, that is for Congress to accomplish by further legislation.

We now turn to the alleged vagueness of the purposes set forth in § 307 (a) and (b). As in *United States v. Rumely*, 341 U. S. 41, 47, which involved the interpretation of similar language, we believe this language should be construed to refer only to "lobbying in its commonly accepted sense"—to direct communication with members of Congress on pending or proposed federal legislation.

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<sup>8</sup> The Government's view is based on a variance between the language of § 307 and the language of § 305. Section 307 refers to any person who "solicits, collects, or receives" contributions; § 305, however, refers not only to "receiving any contributions" but also to "expending any money." It is apparently the Government's contention that § 307—since it makes no reference to expenditures—is inapplicable to the expenditure provisions of § 305. Section 307, however, limits the application of § 305 as a whole, not merely a part of it.

<sup>9</sup> Both the Senate and House reports on the bill state that "This section [§ 307] defines the application of the title. . . ." S. Rep. No. 1400, 79th Cong., 2d Sess., p. 28; Committee Print of H. Rep. on Legislative Reorganization Act of 1946, 79th Cong., 2d Sess., p. 34. See also the remarks of Representative Dirksen in presenting the bill to the House: "The gist of the antilobbying provision is contained in section 307." 92 Cong. Rec. 10088.

The legislative history of the Act makes clear that, at the very least, Congress sought disclosure of such direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign.<sup>10</sup> It is likewise clear that Congress would have intended the Act to operate on this narrower basis, even

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<sup>10</sup> The Lobbying Act was enacted as Title III of the Legislative Reorganization Act of 1946, which was reported to Congress by the Joint Committee on the Organization of Congress. The Senate and House reports accompanying the bill were identical with respect to Title III. Both declared that the Lobbying Act applies "chiefly to three distinct classes of so-called lobbyists:

"First. Those who do not visit the Capitol but initiate propaganda from all over the country, in the form of letters and telegrams, many of which have been based entirely upon misinformation as to facts. This class of persons and organizations will be required under the title, not to cease or curtail their activities in any respect, but merely to disclose the sources of their collections and the methods in which they are disbursed.

"Second. The second class of lobbyists are those who are employed to come to the Capitol under the false impression that they exert some powerful influence over Members of Congress. These individuals spend their time in Washington presumably exerting some mysterious influence with respect to the legislation in which their employers are interested, but carefully conceal from Members of Congress whom they happen to contact the purpose of their presence. The title in no wise prohibits or curtails their activities. It merely requires that they shall register and disclose the sources and purposes of their employment and the amount of their compensation.

"Third. There is a third class of entirely honest and respectable representatives of business, professional, and philanthropic organizations who come to Washington openly and frankly to express their views for or against legislation, many of whom serve a useful and perfectly legitimate purpose in expressing the views and interpretations of their employers with respect to legislation which concerns them. They will likewise be required to register and state their compensation and the sources of their employment."

S. Rep. No. 1400, 79th Cong., 2d Sess., p. 27; Committee Print of H. Rep. on Legislative Reorganization Act of 1946, 79th Cong., 2d

if a broader application to organizations seeking to propagandize the general public were not permissible.<sup>11</sup>

There remains for our consideration the meaning of "the principal purpose" and "to be used principally to aid." The legislative history of the Act indicates that the term "principal" was adopted merely to exclude from the scope of § 307 those contributions and persons having only an "incidental" purpose of influencing legislation.<sup>12</sup> Conversely, the "principal purpose" requirement does not exclude a contribution which in substantial part is to be used to influence legislation through direct communication with Congress or a person whose activities in substantial part are directed to influencing legislation through

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Sess., pp. 32-33. See also the statement in the Senate by Senator La Follette, who was Chairman of the Joint Committee, at 92 Cong. Rec. 6367-6368.

<sup>11</sup> See the Act's separability clause, note 18, *infra*, providing that the invalidity of any application of the Act should not effect the validity of its application "to other persons and circumstances."

<sup>12</sup> Both the Senate and House reports accompanying the bill state that the Act ". . . does not apply to organizations formed for other purposes whose efforts to influence legislation are merely incidental to the purposes for which formed." S. Rep. No. 1400, 79th Cong., 2d Sess., p. 27; Committee Print of H. Rep. on Legislative Reorganization Act of 1946, 79th Cong., 2d Sess., p. 32. In the Senate discussion preceding enactment, Senator Hawkes asked Senator La Follette, Chairman of the Joint Committee in charge of the bill, for an explanation of the "principal purpose" requirement. In particular, Senator Hawkes sought assurance that multi-purposed organizations like the United States Chamber of Commerce would not be subject to the Act. Senator La Follette refused to give such assurance, stating: "So far as any organizations or individuals are concerned, I will say to the Senator from New Jersey, it will depend on the type and character of activity which they undertake. . . . I cannot tell the Senator whether they will come under the act. It will depend on the type of activity in which they engage, so far as legislation is concerned. . . . *It [the Act] affects all individuals and organizations alike if they engage in a covered activity.*" (Italics added.) 92 Cong. Rec. 10151-10152. See also Representative Dirksen's remarks in the House, 92 Cong. Rec. 10088.

direct communication with Congress.<sup>13</sup> If it were otherwise—if an organization, for example, were exempted because lobbying was only one of its main activities—the Act would in large measure be reduced to a mere exhortation against abuse of the legislative process. In construing the Act narrowly to avoid constitutional doubts, we must also avoid a construction that would seriously impair the effectiveness of the Act in coping with the problem it was designed to alleviate.

To summarize, therefore, there are three prerequisites to coverage under § 307: (1) the “person” must have solicited, collected, or received contributions; (2) one of the main purposes of such “person,” or one of the main purposes of such contributions, must have been to influence the passage or defeat of legislation by Congress; (3) the intended method of accomplishing this purpose must have been through direct communication with members of Congress. And since § 307 modifies the substantive provisions of the Act, our construction of § 307 will of necessity also narrow the scope of § 305 and § 308, the substantive provisions underlying the information in this case. Thus § 305 is limited to those persons who are covered by § 307; and when so covered, they must report

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<sup>13</sup> Such a criterion is not novel in federal law. See Int. Rev. Code § 23 (o) (2) (income tax), § 812 (d) (estate tax), and § 1004 (a) (2) (B) (gift tax), providing tax exemption for contributions to charitable and educational organizations “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.” For illustrative cases applying this criterion, see *Sharpe's Estate v. Commissioner*, 148 F. 2d 179 (C. A. 3d Cir.); *Marshall v. Commissioner*, 147 F. 2d 75 (C. A. 2d Cir.); *Faulkner v. Commissioner*, 112 F. 2d 987 (C. A. 1st Cir.); *Huntington National Bank*, 13 T. C. 760, 769. Cf. *Girard Trust v. Commissioner*, 122 F. 2d 108 (C. A. 3d Cir.); *Leubuscher v. Commissioner*, 54 F. 2d 998 (C. A. 2d Cir.); *Weyl v. Commissioner*, 48 F. 2d 811 (C. A. 2d Cir.); *Slee v. Commissioner*, 42 F. 2d 184 (C. A. 2d Cir.). See also Annotation, 138 A. L. R. 456.

all contributions and expenditures having the purpose of attempting to influence legislation through direct communication with Congress. Similarly, § 308 is limited to those persons (with the stated exceptions<sup>14</sup>) who are covered by § 307 and who, in addition, engage themselves for pay or for any other valuable consideration for the purpose of attempting to influence legislation through direct communication with Congress. Construed in this way, the Lobbying Act meets the constitutional requirement of definiteness.<sup>15</sup>

<sup>14</sup> For the three exceptions, see note 2, *supra*.

<sup>15</sup> Under this construction, the Act is at least as definite as many other criminal statutes which this Court has upheld against a charge of vagueness. *E. g.*, *Boyce Motor Lines v. United States*, 342 U. S. 337 (regulation providing that drivers of motor vehicles carrying explosives "shall avoid, so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares, places where crowds are assembled, street car tracks, tunnels, viaducts, and dangerous crossings"); *Dennis v. United States*, 341 U. S. 494 (Smith Act making it unlawful for any person to conspire "to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence. . . ."); *United States v. Petrillo*, 332 U. S. 1 (statute forbidding coercion of radio stations to employ persons "in excess of the number of employees needed . . . to perform actual services"); *Screws v. United States*, 325 U. S. 91, and *Williams v. United States*, 341 U. S. 97 (statute forbidding acts which would deprive a person of "any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States"); *United States v. Wurzbach*, 280 U. S. 396 (statute forbidding any candidate for Congress or any officer or employee of the United States to solicit or receive a "contribution for any political purpose whatever" from any other such officer or employee); *Omaechevarria v. Idaho*, 246 U. S. 343 (statute forbidding pasturing of sheep "on any cattle range previously occupied by cattle or upon any range usually occupied by any cattle grower"); *Fox v. Washington*, 236 U. S. 273 (state statute imposing criminal sanctions on "Every person who shall wilfully print, publish, edit, issue, or knowingly circulate, sell, distribute or display any book, paper, document, or written or printed matter, in any form, advocat-

## II.

Thus construed, §§ 305 and 308 also do not violate the freedoms guaranteed by the First Amendment—freedom to speak, publish, and petition the Government.

Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent."

Toward that end, Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know who is being hired, who is putting up the money, and how much. It acted in the

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ing, encouraging or inciting, or having a tendency to encourage or incite the commission of any crime, breach of the peace or act of violence, or which shall tend to encourage or advocate disrespect for law or for any court or courts of justice. . . ."); *Nash v. United States*, 220 U. S. 373 (Sherman Act forbidding "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations"). Cf. *Jordan v. De George*, 341 U. S. 223 (statute providing for deportation of persons who have committed crimes involving "moral turpitude").

<sup>18</sup> Similar legislation has been enacted in over twenty states. See Notes, 56 Yale L. J. 304, 313-316, and 47 Col. L. Rev. 98, 99-103.



same spirit and for a similar purpose in passing the Federal Corrupt Practices Act—to maintain the integrity of a basic governmental process. See *Burroughs and Cannon v. United States*, 290 U. S. 534, 545.

Under these circumstances, we believe that Congress, at least within the bounds of the Act as we have construed it, is not constitutionally forbidden to require the disclosure of lobbying activities. To do so would be to deny Congress in large measure the power of self-protection. And here Congress has used that power in a manner restricted to its appropriate end. We conclude that §§ 305 and 308, as applied to persons defined in § 307, do not offend the First Amendment.

It is suggested, however, that the Lobbying Act, with respect to persons other than those defined in § 307, may as a practical matter act as a deterrent to their exercise of First Amendment rights. Hypothetical borderline situations are conjured up in which such persons choose to remain silent because of fear of possible prosecution for failure to comply with the Act. Our narrow construction of the Act, precluding as it does reasonable fears, is calculated to avoid such restraint. But, even assuming some such deterrent effect, the restraint is at most an indirect one resulting from self-censorship, comparable in many ways to the restraint resulting from criminal libel laws.<sup>17</sup> The hazard of such restraint is too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest.

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<sup>17</sup> Similarly, the Hatch Act probably deters some federal employees from political activity permitted by that statute, but yet was sustained because of the national interest in a nonpolitical civil service. *United Public Workers v. Mitchell*, 330 U. S. 75.

## III.

The appellees further attack the statute on the ground that the penalty provided in § 310 (b) is unconstitutional. That section provides:

“(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.”

This section, the appellees argue, is a patent violation of the First Amendment guarantees of freedom of speech and the right to petition the Government.

We find it unnecessary to pass on this contention. Unlike §§ 305, 307, and 308 which we have judged on their face, § 310 (b) has not yet been applied to the appellees, and it will never be so applied if the appellees are found innocent of the charges against them. See *United States v. Wurzbach*, 280 U. S. 396, 399; *United States v. Petrillo*, 332 U. S. 1, 9-12.

Moreover, the Act provides for the separability of any provision found invalid.<sup>18</sup> If § 310 (b) should ultimately

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<sup>18</sup> 60 Stat. 812, 814:

“If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.”

be declared unconstitutional, its elimination would still leave a statute defining specific duties and providing a specific penalty for violation of any such duty. The prohibition of § 310 (b) is expressly stated to be "In addition to the penalties provided for in subsection (a) . . ."; subsection (a) makes a violation of § 305 or § 308 a misdemeanor, punishable by fine or imprisonment or both. Consequently, there would seem to be no obstacle to giving effect to the separability clause as to § 310 (b), if this should ever prove necessary. Compare *Electric Bond & Share Co. v. Securities & Exchange Commission*, 303 U. S. 419, 433-437.

The judgment below is reversed and the cause is remanded to the District Court for further proceedings not inconsistent with this opinion.

*Reversed.*

MR. JUSTICE CLARK took no part in the consideration or decision of this case.

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# SUPREME COURT OF THE UNITED STATES

No. 32.—OCTOBER TERM, 1953.

United States of America, Appellant, v. Robert M. Harriss, Ralph W. Moore, Tom Linder and National Farm Committee.	}	On Appeal From the United States District Court for the District of Columbia.
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[June 7, 1954.]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

I am in sympathy with the effort of the Court to save this statute from the charge that it is so vague and indefinite as to be unconstitutional. My inclinations were that way at the end of the oral argument. But further study changed my mind. I am now convinced that the formula adopted to save this Act is too dangerous for use. It can easily ensnare people who have done no more than exercise their constitutional rights of speech, assembly, and press.

We deal here with the validity of a criminal statute. To use the test of *Connally v. General Construction Co.*, 269 U. S. 385, 391, the question is whether this statute "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." If it is so vague, as I think this one is, then it fails to meet the standards required by due process of law. See *United States v. Petrillo*, 332 U. S. 1. In determining that question we consider the statute on its face. As stated in *Lanzetta v. New Jersey*, 306 U. S. 451, 453:

"If on its face the challenged provision is repugnant to the due process clause, specification of details of

the offense intended to be charged would not serve to validate it. . . . It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. . . . No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."

And see *Winters v. New York*, 333 U. S. 507, 515.

The question therefore is not what the information charges nor what the proof might be. It is whether the statute itself is sufficiently narrow and precise as to give fair warning.

It is contended that the Act plainly applies

- to persons who pay others to present views to Congress either in committee hearings or by letters or other communications to Congress or Congressmen and
- to persons who spend money to induce others to communicate with Congress.

The Court adopts that view, with one minor limitation which the Court places on the Act—that only persons who solicit, collect, or receive money are included.

The difficulty is that the Act has to be rewritten and words actually added and subtracted to produce that result.

Section 307 makes the Act applicable to anyone who "directly or indirectly" solicits, collects, or receives contributions "to be used principally to aid, or the principal purpose of which person is to aid" in either

- the "passage or defeat of any legislation" by Congress, or
- "To influence, directly or indirectly, the passage or defeat of any legislation" by Congress.

We start with an all-inclusive definition of "legislation" contained in § 302 (e). It means "bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House." What is the scope of "any other matter which may be the subject of action" by Congress? It would seem to include not only pending or proposed legislation but any matter within the legitimate domain of Congress.

What contributions might be used "principally to aid" in influencing "directly or indirectly, the passage or defeat" of any such measure by Congress? When is one retained for the purpose of influencing the "passage or defeat of any legislation"?

(1) One who addresses a trade union for repeal of a labor law certainly hopes to influence legislation.

(2) So does a manufacturers' association which runs ads in newspapers for a sales tax.

(3) So does a farm group which undertakes to raise money for an educational program to be conducted in newspapers, magazines, and on radio and television, showing the need for revision of our attitude on world trade.

(4) So does a group of oil companies which puts agents in the Nation's capital to sound the alarm at hostile legislation, to exert influence on Congressmen to defeat it, to work on the Hill for the passage of laws favorable to the oil interests.

(5) So does a business, labor, farm, religious, social, racial, or other group which raises money to contact people with the request that they write their Congressman to get a law repealed or modified, to get a proposed law passed, or themselves to propose a law.

Are all of these activities covered by the Act? If one is included why are not the others? The Court apparently excludes the kind of activities listed in categories

(1), (2), and (3) and includes part of the activities in (4) and (5)—those which entail contacts with the Congress.

There is, however, difficulty in that course, a difficulty which seems to me to be insuperable. I find no warrant in the Act for drawing the line, as the Court does, between "direct communication with Congress" and other pressures on Congress. The Act is as much concerned with one, as with the other.

The words "direct communication with Congress" are not in the Act. Congress was concerned with the raising of money to aid in the passage or defeat of legislation, whatever tactics were used. But the Court not only strikes out one whole group of activities—to influence "indirectly"—but substitutes a new concept for the remaining group—to influence "directly." To influence "directly" the passage or defeat of legislation includes any number of methods—for example, nationwide radio, television or advertising programs promoting a particular measure, as well as the "button holing" of Congressmen. To include the latter while excluding the former is to rewrite the Act.

This is not a case where one or more distinct types of "lobbying" are specifically proscribed and another and different group defined in such loose, broad terms as to make its definition vague and uncertain. Here if we give the words of the Act their ordinary meaning, we do not know what the terminal points are. Judging from the words Congress used, one type of activity which I have enumerated is as much proscribed as another.

The importance of the problem is emphasized by reason of the fact that this legislation is in the domain of the First Amendment. That Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the peo-



ple . . . to petition the Government for a redress of grievances."

Can Congress require one to register before he writes an article, makes a speech, files an advertisement, appears on radio or television, or writes a letter seeking to influence existing, pending, or proposed legislation? That would pose a considerable question under the First Amendment, as *Thomas v. Collins*, 323 U. S. 516, indicates. I do not mean to intimate that Congress is without power to require disclosure of the real principals behind those who come to Congress (or get others to do so) and speak as though they represent the public interest, when in fact they are undisclosed agents of special groups. I mention the First Amendment to emphasize why statutes touching this field should be "narrowly drawn to prevent the supposed evil" (see *Cantwell v. Connecticut*, 310 U. S. 296, 307) and not be cast in such vague and indefinite terms as to cast a cloud on the exercise of constitutional rights. Cf. *Stromberg v. California*, 283 U. S. 359, 369; *Thornhill v. Alabama*, 310 U. S. 88, 97-98; *Winters v. New York*, 333 U. S. 507, 509; *Joseph Burstyn, Inc. v. Wilson*, 343 U. S. 495, 504-505.

If that rule were relaxed, if Congress could impose registration requirements on the exercise of First Amendment rights, saving to the courts the salvage of the good from the bad, and meanwhile causing all who might possibly be covered to act at their peril, the law would in practical effect be a deterrent to the exercise of First Amendment rights. The Court seeks to avoid that consequence by construing the law narrowly as applying only to those who are paid to "button hole" Congressmen or who collect and expend moneys to get others to do so. It may be appropriate in some cases to read a statute with the gloss a court has placed on it in order to save it from the charge of vagueness. See *Fox v. Wash-*

*ington*, 236 U. S. 273, 277. But I do not think that course is appropriate here.

The language of the Act is so broad that one who writes a letter or makes a speech or publishes an article or distributes literature or does many of the other things with which appellees are charged has no fair notice when he is close to the prohibited line. No construction we give it today will make clear retroactively the vague standards that confronted appellees when they did the acts now charged against them as criminal. Cf. *Pierce v. United States*, 314 U. S. 306, 311. Since the Act touches on the exercise of First Amendment rights, and is not narrowly drawn to meet precise evils, its vagueness has some of the evils of a continuous and effective restraint.

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# SUPREME COURT OF THE UNITED STATES

No. 32.—OCTOBER TERM, 1953.

United States of America,	}	On Appeal From the	
Appellant,			United States District
v.			Court for the District
Robert M. Harriss, Ralph W.			of Columbia.
Moore, Tom Linder and			
National Farm Committee.)			

[June 7, 1954.]

MR. JUSTICE JACKSON, dissenting.

Several reasons lead me to withhold my assent from this decision.

The clearest feature of this case is that it begins with an Act so mischievously vague that the Government charged with its enforcement does not understand it, for some of its important assumptions are rejected by the Court's interpretation. The clearest feature of the Court's decision is that it leaves the country under an Act which is not much like any Act passed by Congress. Of course, when such a question is before us, it is easy to differ as to whether it is more appropriate to strike out or to strike down. But I recall few cases in which the Court has gone so far in rewriting an Act.

The Act passed by Congress would appear to apply to all persons who (1) solicit or receive funds for the purpose of lobbying, (2) receive and expend funds for the purpose of lobbying, or (3) merely expend funds for the purpose of lobbying. The Court at least eliminates this last category from coverage of the Act, though I should suppose that more serious evils affecting the public interest are to be found in the way lobbyists spend their money than in the ways they obtain it. In the present indictments,

six counts relate exclusively to failures to report expenditures while only one appears to rest exclusively on failure to report receipts.

Also, Congress enacted a statute to reach the raising and spending of funds for the purpose of influencing congressional action *directly or indirectly*. The Court entirely deletes "indirectly" and narrows "directly" to mean "direct communication with members of Congress." These two constructions leave the Act touching only a part of the practices Congress deemed sinister.

Finally, as if to compensate for its deletions from the Act, the Court expands the phrase "the principal purpose" so that it now refers to any contribution which "in substantial part" is used to influence legislation.

I agree, of course, that we should make liberal interpretations to save legislative Acts, including penal statutes which punish conduct traditionally recognized as morally "wrong." Whoever kidnaps, steals, kills, or commits similar acts of violence upon another is bound to know that he is inviting retribution by society, and many of the statutes which define these long-established crimes are traditionally and perhaps necessarily vague. But we are dealing with a novel offense that has no established bounds and no such moral basis. The criminality of the conduct dealt with here depends entirely upon a purpose to influence legislation. Though there may be many abuses in pursuit of this purpose, this Act does not deal with corruption. These defendants, for example, are indicted for failing to report their activities in raising and spending money to influence legislation in support of farm prices, with no charge of corruption, bribery, deception, or other improper action. This may be a selfish business and against the best interests of the nation as a whole, but it is in an area where legal penalties should be applied only by formulae as precise and clear as our language will permit.

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The First Amendment forbids Congress to abridge the right of the people "to petition the Government for a redress of grievances." If this right is to have an interpretation consistent with that given to other First Amendment rights, it confers a large immunity upon activities of persons, organizations, groups and classes to obtain what they think is due them from government. Of course, their conflicting claims and propaganda are confusing, annoying and at times, no doubt, deceiving and corrupting. But we may not forget that our constitutional system is to allow the greatest freedom of access to Congress, so that the people may press for their selfish interests, with Congress acting as arbiter of their demands and conflicts.

In matters of this nature, it does not seem wise to leave the scope of a criminal Act, close to impinging on the right of petition, dependent upon judicial construction for its limitations. Judicial construction, constitutional or statutory, always is subject to hazards of judicial reconstruction. One may rely on today's narrow interpretation only at his peril, for some later Court may expand the Act to include, in accordance with its terms, what today the Court excludes. This recently happened with the anti-trust laws, which the Court cites as being similarly vague. This Court, in a criminal case, sustained an indictment by admittedly changing repeated and long-established constitutional and statutory interpretations. *United States v. South-Eastern Underwriters Assn.*, 322 U. S. 533. The *ex post facto* provision of our Constitution has not been held to protect the citizen against a retroactive change in decisional law, but it does against such a prejudicial change in legislation. As long as this statute stands on the books, its vagueness will be a contingent threat to activities which the Court today rules out, the contingency being a change of views by the Court as hereafter constituted.

The Court's opinion presupposes, and I do not disagree, that Congress has power to regulate lobbying for hire as a business or profession and to require such agents to disclose their principals, their activities, and their receipts. However, to reach the real evils of lobbying without cutting into the constitutional right of petition is a difficult and delicate task for which the Court's action today gives little guidance. I am in doubt whether the Act as construed does not permit applications which would abridge the right of petition, for which clear, safe and workable channels must be maintained. I think we should point out the defects and limitations which condemn this Act so clearly that the Court cannot sustain it as written, and leave its rewriting to Congress. After all, it is Congress that should know from experience both the good in the right of petition and the evils of professional lobbying.

